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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

FILED APRIL 12, 1935

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

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[Caption omitted.]

2 In United States District Court, Northern District of Mississippi, Delta Division

Indictment

Filed January 31, 1935

In the District Court of the United States, in and for Northern District aforesaid, at the January term thereof, A. D. 1935.

The grand jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oath present, that Fred Hastings and J. B. Barner, about or on the 9th day of November, in the year 1934 in the Delta division of said district, and within the jurisdiction of said court, at the city of Clarksdale in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the warehouse of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and the there stored and on storage in said warehouse, to wit: a certain bale of cotton identified on the records of said warehouse as bale of cotton number 407784, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contr[illegible] to and in violation of the said United States Warehouse Act [illegible]he regulations promulgated thereunder, contrary to the form [illegible]he statute in such case made and provided, and against the peace and dignity of the United States.

LESTER M. SACK,
Assistant United States Attorney.

3 Second Count

And the grand jurors aforesaid, on their oath aforesaid, do further present, that the said Fred Hastings and J. B. Barner, about or on the 12th day of December, in the year 1934, in the Delta division of said district, and within the jurisdiction of said count, at the city of Clarksdale, in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the Federal Compress and Warehouse Com-

pany, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and there stored and on storage in said warehouse, to wit: a certain bale of cotton number 433962, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

LESTER M. SACK,
Assistant United States Attorney.

4 Third Count

And the grand jurors aforesaid, on their oath aforesaid, do further present, that the said Fred Hastings and J. B. Barner, about or on the 15th day of December, in the year 1934, in the Delta division of said district, and within the jurisdiction of said court, at the city of Clarksdale, in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and there stored and on storage in said warehouse, to wit: a certain bale of cotton number 554506, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

LESTER M. SACK,
Assistant United States Attorney.

No. 2671. District Court of the United States for the Delta Division of the Northern District of Mississippi. The United States vs. Fred Hastings and J. B. Barner (Coahoma County). Indictment. Vio. sec. 270, tit. 7, U. S. Code. A true bill. J. E. Houston, Sr., Foreman.

[File endorsement omitted.]

5

In United States District Court

No. 2671

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FRED HASTINGS and J. B. BARNER, DEFENDANTS

Demurrer

Filed Feb. 4, 1935

DEMURRER OF FRED HASTINGS TO COUNT ONE OF THE INDICTMENT

Now comes Fred Hastings, defendant in the cause above, and demurs to Count One in the indictment against him and, as grounds for demurrer, says:

I

The said Count One charges no offense against the laws of the United States of America.

II

Section 270, title 7 of the United States Code Annotated, being the section upon which the indictment is based, is unconstitutional in that it no power has been delegated to the United States by the Constitution authorizing it to make it an offense against the United States Government to steal or remove a bale of cotton from a cotton warehouse such as described and referred to in the indictment.

III

It is not charged in the indictment that the cotton in question was in Interstate Commerce at the time it is alleged that it was removed and stolen.

6

IV

The indictment does not charge that the cotton referred to was the personal property of another.

V

The indictment does not charge that the cotton was of any value.

VI

The indictment fails to charge that the cotton was converted to the use of the defendants, or either one of them.

VII

The indictment fails to allege the ownership of the property and fails to charge any intent to defraud the owner thereof.

VIII

The indictment is so vague and indefinite it does not inform the defendant of the charge against him.

DEMURRER OF FRED HASTINGS TO COUNTS TWO AND THREE OF THE INDICTMENT

The defendant, Fred Hastings, assigns as grounds of demurrer to the second and third counts, the same as hereinabove set out to Count One.

BREWER & MONTGOMERY,
ED. C. BREWER,
Attorneys for Defendant Fred Hastings.

[File endorsement omitted.]

7 In United States District Court for the Delta Division of the Northern District of Mississippi

No. 2671–CRIM.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

FRED HASTINGS AND J. B. BARNER, DEFENDANTS

Judgment

This cause this day coming on to be heard upon demurrer of Fred Hastings to Count One, Two, and Three of the indictment in this cause, being all of said counts therein contained, and the court having considered said demurrer and being of the opinion that it is well taken and should be sustained; therefore

It is by the court ordered and adjudged that the said demurrer to the said three counts to the indictment be and the same is hereby sustained, to which action of the court in sustaining the demurrer, the United States of America in open court duly excepted, which exception is by the court hereby allowed,

Ordered and adjudged this the 4th day of February, 1935.

ALLEN COX,
District Judge.

Entered.
M. B. 6, page 172.

8 In United States District Court

[Title omitted.]

Judge's certificate as to grounds for sustaining demurrer

I hereby certify that on the 4th day of February 1935 an order was entered by the court in this cause sustaining a demurrer to each

count of the indictment of the defendant, Fred Hastings, and that the grounds for sustaining the said demurrer were as follows:

(1) That said indictment fails to charge any offense against the laws of the United States;

(2) That the indictment fails to charge that the cotton alleged to have been removed and stolen was the property of any person;

(3) That the indictment fails to allege the name of the owner of said cotton, and does not charge any intent to defraud the owner thereof;

(4) That the indictment does not allege the value of the cotton alleged to have been removed and stolen, or that the cotton was of any value;

(5) That section 270, title 7, of the United States Code, being the section under which the indictment is drawn, is unconstitutional, in that, Congress is without authority under the Constitution to make it an offense against the laws of the United States to remove agricultural products from a Federal licensed warehouse as alleged in the indictment.

This the 21st day of February 1935.

ALLEN COX,
District Judge.

Ent. M. B. 6, page 191.

9 In United States District Court

[Title omitted.]

Petition for appeal to the Supreme Court of United States

Filed March 4, 1935

Comes the United States of America, plaintiff herein, and states that on the 4th day of February 1935, a demurrer of the defendant, Fred Hastings, to each and every count of the indictment herein was by the court sustained, and the plaintiff feeling aggrieved at the ruling of said district court in sustaining said demurrer, prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause duly authenticated, may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA,
By LESTER G. FANT,
United States Attorney,
Northern District of Mississippi.

[File endorsement omitted.]

13 In United States District Court

[Title omitted.]

Assignments of errors

Filed March 4, 1935

Comes the United States of America, plaintiff herein, by Lester G. Fant, United States attorney for the northern district of Mississippi, and avers that in the record proceedings and judgment herein there is manifest error, and against the just rights of said plaintiff in this, to wit:

1. That the court committed material error against plaintiff in sustaining the demurrer of the defendant, Fred Hastings, to each and every count of the indictment.

2. That the court committed material error against plaintiff in sustaining said demurrer and holding that each and every count of the indictment was defective because of failure to charge that the agricultural products alleged to have been stolen was the property of any person.

3. That the court committed material error against plaintiff in ruling that each and every count of said indictment was defective because of failure to allege the name of the owner of the cotton alleged to have been removed and stolen, and not charging any intent to defraud the owner thereof.

4. That the court committed material error against plaintiff in holding each and every count of the indictment defective because of failure to allege the value of the cotton alleged to have
14 been removed and stolen, and that the cotton was of any value.

5. That the court committed material error against plaintiff in holding that section 270, title 7, of the United States Code, being the section under which each count of the indictment is drawn, is unconstitutional, in that, Congress was without authority under the Constitution to declare it an offense against the laws of the United States to remove agricultural products from a Federal licensed warehouse as alleged in the indictment, and as defined in said section.

Wherefore, for all of the above information appearing on the face of the record proceedings and judgment herein plaintiff avers that material error was committed prejudicial to it in this cause, and prays that the judgment of the District Court be reversed.

This the 4th day of March, 1935.

LESTER G. FANT,
United States Attorney.

[File endorsement omitted.]

15 In United States District Court

No. 2671

UNITED STATES OF AMERICA

vs.

FRED HASTINGS, ET AL.

Order allowing appeal to Supreme Court of United States

This cause having come on this day before the court on the petition of the United States of America, plaintiff in the above-entitled cause, praying an appeal to the Supreme Court of the United States for a reversal of the judgment herein sustaining a demurrer of the defendant, Fred Hastings, to each and every count of the indictment in said cause, and that a duly certified copy of the record of said cause to be transmitted to the Clerk of the Supreme Court of the United States, and the court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the clerk of this court, it is, therefore, by the court ordered and adjudged that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this court in sustaining the demurrer of the defendant, Fred Hastings, to the indictment to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court. It is further ordered that the United States of America be, and it is hereby, permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

This the 4th day of March, 1935.

ALLEN COX,
District Judge.

Ent. M. B. 6, page 193.

17 [Citation in usual form showing service, on Ed C. Brewer, omitted in printing.]

18 In Supreme Court of the United States

Praecipe for transcript of record

Filed March 25, 1935

To the clerk of the United States District Court for the Northern District of Mississippi:

The appellant hereby directs that in preparing the transcript of the record of this cause in the United States District Court for the

Northern District of Mississippi, in connection with its appeal to the Supreme Court of the United States, that you include the following:

1. Indictment.
2. Demurrer.
3. Judgment sustaining demurrer.
4. Certificate of district judge stating reasons for sustaining demurrer.
5. Petition for appeal to the Supreme Court.
6. Statement of jurisdiction of Supreme Court.
7. Assignment of errors.
8. Order allowing appeal.
9. Notice of service on appellee of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.
10. Citation.
11. Praecipe.

LESTER G. FANT,
United States Attorney, Northern District of Mississippi,
Counsel for Appellant.

Service of the foregoing praecipe acknowledged this the 23 day of March, 1935.

BREWER & MONTGOMERY,
By ED C. BREWER,
Counsel for Appellee.

[File endorsement omitted.]

19 [Clerk's certificate to foregoing transcript omitted in printing.]

20 In Supreme Court of the United States

Statement of points relied upon and designation of entire record for printing

Filed May 7, 1935

Pursuant to Rule 13 of this Court, the appellant states that it intends to rely on all the points set out in its assignment of errors.

The appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

STANLEY REED,
Solicitor General.

[File endorsement omitted.]

(Endorsement on cover:) File No. 39,498. N. Mississippi, D. C. U. S. Term No. 22. The United States of America, appellant, vs. Fred Hastings. Filed April 12, 1935. File No. 22. O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE, 1935

FILE COPY

No. 22

In the Supreme Court of the United States

October Term, 1934

THE UNITED STATES OF AMERICA, APPELLANT

v.

FRED HASTINGS

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

STATEMENT AS TO JURISDICTION

In the District Court of the United States in and for the Delta Division of the Northern District of Mississippi

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No. 2671

UNITED STATES OF AMERICA

v.

FRED HASTINGS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause:

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, Section 682, of the United States Code, otherwise known as the "Criminal Appeals Act", and by Section 345, Title 28, of the United States Code.

B. The statute of the United States the validity and construction of which is involved herein is Section 270, of Title 7, of the United States Code, which section reads as follows:

> Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agricul-

ture, or his designated representative, under this chapter, or who shall violate or fail to comply with any provision of Section 250 of this chapter, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this chapter, or who shall classify, grade, or weigh

> fraudulently, any agricultural products stored or to be stored under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500.00, or imprisoned for not more than six months, or both, in the discretion of the court.

C. The judgment of the District Court sought to be reviewed was entered on February 4, 1935, and an application for appeal was filed on March 4, 1935, and is presented to the District Court herewith, to wit: On this the 4th day of March, 1935.

The indictment in this case is in three separate counts, each of which said counts is based upon Section 270, Title 7, of the United States Code, and charges in substance that the defendants, Fred Hastings and J. B. Barner, on a day named, knowingly, wilfully, and unlawfully removed and stole, without any lawful authority and contrary to the provisions of the United States Warehouse Act and regulations promulgated thereunder, from a warehouse licensed under the United States Warehouse Act, certain agricultural products stored therein, for which licensed warehouse receipts had been issued. A demurrer to the indictment was filed by the defendant Hastings, and at the hearing thereof the court construed Section 207, Title 7, of the United States Code so as to require that an indictment under this section should allege that the property removed and stolen was the property of some person, and the name of that person, that there was an intent to defraud the owner thereof, and that it was necessary to

allege that the property was of some specific value. The court sustained the demurrer on the ground that the indictment did not charge that the property alleged to have been removed and stolen was the property of any person, and failed to allege the name of the owner and an intent to defraud the owner, and because the indictment did not allege the value of the property alleged to have been removed and stolen or that the property was of any value. In sustaining the demurrer the court further held that Section 270, Title 7, of the United States Code, being the section under which the indictment was drawn, is unconstitutional, in that, Congress was without authority under the Constitution to declare it an offense against the laws of the United States to remove agricultural products from a federal licensed warehouse as alleged in the indictment, and as defined in said section.

The following decisions are believed to sustain the jurisdiction of the Supreme Court:

U. S. v. *Heinze,* 218 U. S. 532.
U. S. v. *Stevenson,* 215 U. S. 190.
U. S. v. *Bitty,* 208 U. S. 393.
U. S. v. *Keitel,* 211 U. S. 370.

Respectfully submitted.

LESTER G. FANT,
United States Attorney,
Northern District of Mississippi.

MARCH 4, 1935.

Filed this 4th day of March, 1935.

HUBERT D. STEPHENS, Jr. Clerk.

By M. A. COOK, *Deputy Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1935

No. 23

In the Supreme Court of the United States

October Term, 1936

THE UNITED STATES OF AMERICA, APPELLANT,

v.

TOM HARPER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

v.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court rendered no opinion.

JURISDICTION

The judgment of the District Court was entered February 4, 1935 (R. 4). The appeal to this Court was prayed and allowed on March 4, 1935 (R. 5, 7). The jurisdiction of this Court to review by direct appeal the judgment involved is conferred by the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682).

QUESTION PRESENTED

Whether the District Court erred in sustaining the demurrer of the appellee filed to an indictment charging him with removing and stealing certain cotton from a licensed warehouse contrary to the provisions of the "United States Warehouse Act" as amended.

STATUTE INVOLVED

Act of August 11, 1916, as amended March 2, 1931, c. 366, Sec. 10, 46 Stat. 1463, 1465 (U. S. C. Sup. VII, Title 7, Sec. 270):

> Every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture, or his designated representative, under this chapter, or who shall violate or fail to comply with any provision of section 250 of this chapter, or who shall issue or utter a false or fraudulent receipt or certificate, or change in any manner an original receipt or certificate subsequently to issuance by a licensee, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double

the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such products to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive, a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this chapter, or who shall classify, grade, or weigh fraudulently, any agricultural products stored or to be stored under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof fined not more than $500, or imprisoned for not more than six months, or both, in the discretion of the court.

STATEMENT

On January 31, 1935, the appellee, with one J. B. Barner, was indicted in the United States District Court for the Northern District of Mississippi, Delta Division, on three counts. (R. 1.) The counts are identical, save for the designation of the particular bale of cotton charged to have been removed. The first count is as follows:

The grand jurors of the United States, impaneled, sworn, and charged at the term

aforesaid, of the court aforesaid, on their oath present, that Fred Hastings and J. B. Barner, about or on the 9th day of November, in the year 1934 in the Delta division of said district, and within the jurisdiction of said court, at the city of Clarksdale in Coahoma County, Mississippi, did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the warehouse of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and *the* there stored and on storage in said warehouse, to wit: a certain bale of cotton identified on the records of said warehouse as bale of cotton number 407784, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

On February 4, 1935, the appellant filed a demurrer to this indictment (R. 3). The reasons

assigned are that Section 270 is unconstitutional, that the indictment fails to charge that the cotton was the personal property of another, that it was of any value, that it was converted to the use of the defendants, or either one of them; that the indictment fails to allege the ownership of the property or any intent to defraud the owner thereof; and that it is so vague and indefinite as not to inform the appellee of the charges against him (R. 3).

On February 4, 1933, the District Judge sustained the demurrer (R. 4). On February 21, 1935, he signed a certificate giving as the grounds for his action substantially the reasons set forth in the demurrer (R. 4).

From that judgment this appeal is taken.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that Section 270, Title 7 of the United States Code, under which the indictment was drawn, is unconstitutional, in that Congress is without authority to declare it an offense against the laws of the United States to remove agricultural products from a warehouse licensed under the Federal Warehouse Act.

2. In holding that the indictment was defective because of the failure to allege that the cotton charged to have been removed and stolen was the property of any person.

3. In holding that the indictment was defective because of the failure to allege the ownership of

the cotton charged to have been removed and stolen, and the intent to defraud the owner thereof.

4. In holding that the indictment was defective because of the failure to allege the value of the cotton charged to have been removed and stolen, or that it had any value.

5. In holding that the indictment was defective because it fails to charge any offense against the laws of the United States.

6. In sustaining the demurrer to the indictment.

Facts Concerning the Functions of the Warehouse and the Warehouse Receipt Relevant to the Constitutional Questions at Issue

The present record contains none of the factual background necessary to an understanding of the functions of the warehouse and the warehouse receipt in the marketing of agricultural products in interstate commerce. Appellant assumes, however, that the Court will consider all the relevant facts of which it may properly take notice.[1] Facts of this character are set forth in the statement which follows. For the purposes of the present case, particular reference is made to cotton.

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[1] See *Muller* v. *Oregon*, 208 U. S. 412, 419; *New State Ice Company* v. *Liebmann*, 285 U. S. 262, 286–287 (dissent); *Bandini Co.* v. *Superior Court*, 284 U. S. 16; *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 422, 444; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 10–15; *Nebbia* v. *New York*, 291 U. S. 502; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 514, 519; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 10.

1. THE NEED FOR AN ADEQUATE WAREHOUSING SYSTEM

Warehouses properly perform three important functions in the marketing of cotton. (1) They aid in financing the marketing movement by providing negotiable warehouse receipts which may be used as collateral for loans, and which, if accurate and reliable, greatly facilitate trading. (2) By eliminating the need for immediate selling, they distribute the marketing period over a greater period of time. And, (3) they furnish physical protection to the cotton until it is consumed.[2]

Prior to the World War, when the break-down of agricultural markets focused attention on the inadequacies of the system, the warehouses were unable to perform any of these functions adequately.[3]

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[2] See Services in Cotton Marketing, U. S. Department of Agriculture, Bulletin No. 1445, p. 23; *Cotton Warehousing—Benefits of an Adequate System*, Yearbook of U. S. Department of Agriculture (1918) (referred to hereafter as *Cotton Warehousing*), p. 400.

[3] "The outbreak of the European war emphasized the fact that the farm-marketing machinery of this country is seriously weak, insufficient, and inadequate—a condition which already had been more or less recognized by students of farm economics. From a very thorough study of our system of marketing there will appear: (1) A lack of adequate storage facilities; (2) a lack of proper control and regulation of such storage systems as exist; (3) an absence of uniformity in their methods of operation and the form of receipts issued; (4) a multiplicity of standards for grading and classification, or in some cases an entire absence of such standards for grading and classification; (5) a lack of disinterested graders, classifiers, and weighers; (6) a lack of proper relationship between the storage and banking systems

If properly stored, cotton is among the least perishable of agricultural products, yet facilities for marketing it over a space of time and in an orderly and efficient manner were poor. Production loans, usually arranged, for obvious reasons, to mature during the harvesting season, forced the farmer to sell immediately, usually on an already glutted market, and at a reduced price.[4] Any other course of conduct was extremely difficult. Warehouses were inadequate, and their lax methods and uncertain financial responsibility made their receipts of little value as collateral.[5] Poor construction and lack of necessary fire protection caused high insurance rates which in turn made storage more expensive.[6] Banks were unwilling to loan on cotton as collateral,

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of the country." H. Rep. No. 60, 64th Cong., 1st sess., p. 1, the report on H. R. 9419, which became the present Act. See also *Cotton Warehousing*, *supra*, p. 427.

[4] A study of 25 seasons from 1892–93 to 1916–17 showed that in 16 seasons the low average price occurred during September, October, November, or December, the four months of heaviest marketing. In 5 other seasons the low point was reached in the month just before or just after. *Cotton Warehousing*, *supra*, pp. 400–403. Since that time the price has been much more free from seasonal fluctuations. Only 7 times during the 18 years from 1915–1916 to 1932–1933 was the lowest price reached during those 4 months. See Yearbook, U. S. Department of Agriculture (1931), Table 148, and Yearbook, U. S. Department of Agriculture (1934), Table 121.

[5] See H. Rep. No. 60, 64th Cong., 1st sess., p. 1; *Cotton Warehousing*, *supra*, p. 399.

[6] See *Cotton warehousing*, *supra*, p. 399.

even local banks exacting a very high rate of interest.[7]

Yet if the farmer or local dealer, repelled by the high cost and slight value of storage, kept his cotton stacked on the ground, or in poorly constructed sheds, as many of them did, the so-called "country damage" was inevitable. Weather, fire, mud, dust, and rot took an annual toll estimated at from $30,000,000 to $75,000,000.[8]

Even before the passage of the Federal Act, the States had sought to remedy the situation by imposing schemes of state supervision, and at the present time practically all of the southern States have enacted not only the Uniform Warehouse Receipts Act, but also regulatory legislation of various types.[9] State regulation, however, was not wholly adequate.[10] Lack of uniformity in warehouse receipts detracted from their free use as collateral, and warehouse receipts issued in one State would differ radically from those issued in

[7] See Loëb, *Warehousing as Affecting the Production, Financing, and Marketing of Cotton*, Nat. Conf. of Marketing and Farm Credits (1915), p. 2; Yearbook, U. S. Department of Agriculture (1933), p. 84.

[8] *Cotton Warehousing*, *supra*, p. 404.

[9] State warehouse laws are analyzed in Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931) 15 Minnesota Law Review, 292.

[10] Even at the present time state regulation is not satisfactory. See *Hanna*, *supra*, pp. 305, 316. The use made of the Federal Act (*infra*, p. 21) attests the value which is attributed to an adequate and uniform system of warehouse licensing.

another.[11] In addition, the value of the warehouse receipt depends not only on the care taken to supervise the warehouse, but also on the skill and impartiality of the weighers, graders, and classifiers. Because state laws gave no assurance that only competent men would be employed in these positions, banks hesitated to rely on the receipts of warehouses even if they were under state supervision.[12]

2. THE UNITED STATES WAREHOUSE ACT

The Federal law, enacted in 1916, is an attempt to make the warehouse and the warehouse receipt efficient and effective elements in the marketing of agricultural products in interstate and foreign commerce. By it any warehouseman is given the privilege of applying to the Secretary of Agriculture for a license to operate any warehouse in

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[11] *Financing the Production and Distribution of Cotton*, Federal Reserve Board (1923) pp. 30, 31. State regulation made it necessary for banks to know the warehouse laws of each State and their possible weaknesses. See an analysis of state laws in Federal Reserve Bulletin, September 1915, p. 260.

[12] "The considerations which determine the value of warehouse receipts are: (1) The structure and location of the warehouse, (2) the facts set forth on the receipt, (3) the kind and amount of supervision received from disinterested parties, (4) the net free assets of the company, (5) the size and nature of the bond furnished, (6) the kind and amount of insurance carried on the cotton in the warehouse, and (7) the integrity and standing of the officials responsible for the operation of the warehouse." *Services in Cotton Marketing*, *supra*, p. 23.

which any agricultural product is or may be stored for interstate or foreign commerce (7 U. S. C., Secs. 242, 244). The applicant must be found competent to conduct such a warehouse in accordance with the Act and the regulations, and must have a satisfactory margin of assets. (Reg. 2, Secs. 2, 3.[13]) The warehouse itself must be suitable for the proper storage of the particular agricultural product for which the license is sought (Sec. 244). Once the applicant has been licensed, every precaution is taken to insure the reliability of the warehouse receipts which he issues. A bond is required, proportioned to the size of the warehouse (Sec. 247; Reg. 3). Adequate insurance must be maintained (Sec. 247; Reg. 5, Secs. 1–3). The records, books, and papers of the warehouse must be kept in a fireproof vault, or other safe place (Reg. 5, Sec. 6), and an adequate system of accounting is required (Reg. 5, Sec. 11). Frequent inspections are made, both of the warehouse (Sec. 243) and of the records and books of the warehouseman (Sec. 267), and if violations of the Act or of the regulations are discovered the license may, after a hearing, be revoked (Sec. 246). Rates must be reasonable, and before any changes are made in the schedule of charges a statement in writing must be filed with

[13] References to the regulations are to Regulations for Cotton Warehouses, U. S. Department of Agriculture, Bureau of Agricultural Economics, Service and Regulatory Announcements No. 126 (1934), as amended to July 18, 1935.

the Secretary showing the proposed change and the reasons therefor. (Reg. 5, Sec. 7.)

The receipts themselves are required to give complete information about the products which they represent. The Act provides (7 U. S. C., Sec. 260):

> Every receipt issued for agricultural products stored in a warehouse licensed under this chapter shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: *Provided,* That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: *Provided further,* That until such offi-

cial standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States Warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: *Provided,* That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such other terms and conditions within the limitations of this chapter as may be required by the Secretary of Agriculture; and (l) the signature of the warehouseman, which may be made by his authorized agent: *Provided,* That unless otherwise required by the law of the State in which the warehouse is located, when requested by a depositor of other than fungible agricultural products, a receipt

> omitting compliance with subdivision (g) of this section may be issued: *Provided, however,* That the Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

In addition, elaborate precautions have been taken to insure that all receipts shall be genuine. A plan has been worked out which throws around the issuance of receipts restrictions similar to those used in issuing bank notes. Since 1924 all cotton receipts have been printed upon only special paper by a bonded printer, have been numbered serially, and have been issued to the warehousemen under strict supervision.[14]

To increase still further the value of the receipts, the Secretary of Agriculture is authorized by the Act to issue, upon application, and after proof of qualification, licenses to individuals to classify, grade, sample, or weigh the products to be stored in licensed warehouses (Sec. 252; Reg. 7). Such licenses are revocable if the licensees cease to act or in any way become incompetent (Sec. 253; Reg. 7, Sec. 11). Inspection and grading of the products stored in licensed warehouses need not be done by licensed inspectors and graders, however, unless the products are fungible and are to be mingled in a common mass (Secs. 256, 258).

[14] Services in Cotton Marketing, *supra*, p. 23; *Once Again the United States Warehouse Act*, U. S. Department of Agriculture (1925) pp. 6–7.

The Warehouse Act has found wide favor with warehousers of cotton,[15] and the receipts meet the approval of the banks.[16] Cooperative marketing associations favor its use.[17]

3. THE USE OF THE WAREHOUSE RECEIPT IN MARKETING COTTON

The problem of financing the marketing of cotton may be divided into two phases, that of financing the primary markets scattered throughout the

[15] For the first five years, licenses were few. By April 1, 1920, only 23 warehouses with a capacity of 40,050 bales of cotton had been licensed. (U. S. Dept. of Agriculture, Service and Regulatory Announcements No. 71, p. 3.) By the following year, the number of warehouses had increased to 238, with a capacity of 429,957 bales. (*Ibid.*) By May 1, 1922, 268 warehouses had been licensed, with 1,209,695 bales capacity. (*Ibid.*) By February 1930 there were 362 licensees with a total capacity of 4,881,459 bales. (S. Rep. No. 1775, 71st Cong., 3d sess., p. 1.) The latest figures from the Bureau of Agricultural Economics, for September 14, 1935, show that 438 cotton warehouses in 16 States with a total capacity of 5,988,380 bales are now licensed under the Act, and that licenses have been issued to 884 cotton granders, classifiers, weighers, and samplers. See p. 20, *infra*.

[16] See, *e. g.*, Service and Regulatory Announcements No. 71, *supra*, pp. 6–9; *Once Again the United States Warehouse* Act, *supra*, pp. 11–12; Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931), 15 Minnesota Law Rev., p. 292, 295–296; yearbook, U. S. Department of Agriculture (1933), p. 84.

[17] See Hearing before Senate Committee on Agriculture and Forestry on H. R. 7, 71st Cong., 3d sess., pp. 11–17; *The Banker and the United States Warehouse Act*, U. S. Department of Agriculture (1925), p. 11.

South, and that of financing the central cotton markets in the larger centers.[18]

In the primary markets the receipts are used by both growers and buyers. The grower who is not in a position to finance himself, but who does not wish to dump his cotton on the market as soon as it is ginned is able to negotiate a loan from the local bank by using the warehouse receipts as collateral.[19] The local buyer, operating on a limited amount of cash, pledges the warehouse receipts for cotton which he buys with the bank and receives money to purchase more cotton, which he can, in turn, pledge for more money.[20] The amount which can be borrowed on a warehouse receipt, and hence its utility in financing the local markets, depends on the factors already mentioned.[21]

It is in the concentration markets scattered through the South, however, that credit is needed in amounts which only the large financial centers

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[18] Financing the Production and Distribution of Cotton, Federal Reserve Board (1923). This study presents a clear picture of the importance of the warehouse receipt in cotton marketing. See also Services in Cotton Marketing, *supra*, pp. 19–33.

[19] Financing the Production and Distribution of Cotton, *supra*, pp. 31–32.

[20] Sometimes a demand-acceptance arrangement is worked out with the local bank, the warehouse receipts being used as collateral against the advances. *Ibid.* When the cotton is to be moved, the bank will usually exchange the warehouse receipt for a trust receipt which it holds until the trust receipts are in turn surrendered in exchange for the bills of lading. *Id.*, p. 33.

[21] *Id.*, p. 35.

can supply.[22] A large part of this credit is extended to the cotton factors. Sometimes the factors receive the cotton itself, and sometimes they receive only the warehouse receipts and a sample. In either event, the factor immediately pledges the receipts with the banks to secure the advances he needs. When the loans become larger than the local banks can handle, banks in other cities are called upon to aid, the warehouse receipts usually being held in trust by the local bank to secure the loans from the larger cities.[23]

But the chief functions in assembling and distributing the cotton fall upon the cotton merchants or brokers. As the cotton season progresses, the broker accumulates large stocks, financing himself by pledging his warehouse receipts. Credit is in large part secured from banks in large centers, the warehouse receipts either being sent to the large banks or held for their account by the local banks.[24]

Warehouse receipts are also widely used as a convenient means of trading in cotton on the large exchanges in New York and New Orleans. After the cotton has been warehoused, the receipts are sent

[22] The yearly average maximum borrowings by spot and future cotton concerns in the financial centers for the three years ending in 1922 was $121,809,695.67. Of the cities furnishing funds, New York, New Orleans, and Boston supplied 55.67% of the total. *Id.*, p. 36.

[23] *Id.*, p. 37.

[24] *Id.*, p. 39.

to those cities and delivered in satisfaction of future contracts.[25]

The warehouse receipt is also used extensively by mills to finance purchases of cotton, both in the cotton producing States, and in the North.[26]

4. THE PRESENT CASE

The nature of the warehouse involved in the present case must be deduced from facts outside the record, but a fair picture may be had. Clarksdale, Mississippi, in which the warehouse from which the cotton alleged to have been stolen is located (R. 1), is the county seat of Coahoma County and had, in 1930, a population of 10,043. It is located on the main line of the Yazoo & Mississippi Valley Railway, about 70 miles south of Memphis, Tennessee, and is an important cotton market.[27] Coahoma County is located in the heart of the same delta region as Greenwood and Cleveland, Mississippi, and it may be assumed that the practices set out in *Federal Compress Co.* v. *McLean,* 291 U. S. 17, and *Chassaniol* v. *City of Greenwood,* 291 U. S. 584, also prevail in Clarksdale, which is of comparable size.[28]

Cotton, one may assume, comes to Clarksdale, sometimes by wagon or truck, more often by rail.

[25] See By-Laws, New York Cotton Exchange, §§ 42–44.

[26] Financing the Production and Distribution of Cotton, *supra*, pp. 41–43; Services in Cotton Marketing, *supra*, pp. 32–35.

[27] Encyclopedia Brittanica (14th ed., 1929), vol. 5, p. 767.

[28] Cleveland, in 1930, had a population of 3,240; Greenwood, 11,123.

It is warehoused there, and the warehouse receipts are used to buy and sell, and are pledged at the banks for loans, much of the credit being obtained outside the State.[29] All but a negligible part of the cotton ultimately finds its way into other States.[30] When the cotton is brought to Clarksdale by rail, through rates are allowed from the point of origin to the point of destination, even though the cotton is warehoused in Clarksdale for a time.[31]

The foregoing statement is not intended to indicate that warehouses have any less important function in the marketing of other basic agricultural commodities. Like cotton, products such as grain, tobacco, and wool are produced in a limited section of the United States and pass through the

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[29] The inability of the local banks to finance the cotton crop is becoming less pronounced, due to the increased use of the intermediate credit corporations (Services in Cotton Marketing, *supra*, pp. 31–32). Their present limitations are demonstrated by the situation in Mississippi. Figures compiled by the Bureau of Agricultural Economics from census reports show that the average annual production of cotton in that State during the years 1931–33 was about 1,435,000 bales. At $50 per bale, which is low, this would be a value of $71,500,000. The Bankers Directory (1934) showed for all banks in Mississippi a total capital, surplus, and undivided profits of only $19,429,000 on January 1, 1934. All of this money is not, of course, available for cotton, as lumber, farming, cottonseed, and ordinary commercial operations require a large percentage of it.

[30] Figures compiled by the Bureau of Agricultural Economics from census reports show that for the ten-year period 1925–1934, only 2.66% of the cotton produced in Mississippi was consumed in that State. See also *Federal Compress Co.* v. *McLean*, *supra*, p. 20.

[31] Services in Cotton Marketing, *supra*, p. 20; see *Federal Compress Co.* v. *McLean*, *supra*, p. 20.

channels of interstate commerce to the ultimate consumers. The Warehouse Act has also been widely used as an aid to the orderly and efficient marketing of these and similar crops. The extent to which the Act has been utilized, as well as the conservatism with which licenses are issued, is indicated by the following table:[82]

Applications received and licenses issued, week ending Sept. 14, 1935

Commodity	Applications		Licenses		
	Warehouseman	Classifier, weigher, &c.	Warehouseman: Number	Warehouseman: Capacity	Classifier, weigher, &c.
Cotton	1,483	2,551	438	b/o 5,989,300	884
Grain	1,932	3,865	377	bus 88,737,140	943
Wool	128	308	7	lbs 12,712,420	22
Tobacco	270	742	32	lbs 256,805,000	134
Nuts:					
Peanuts	96	131	8	tons 9,435	14
Pecans	15	20	....	tons	....
Broomcorn	9	15	3	bales 15,250	4
Beans	53	114	3	cwt 135,000	18
Potatoes	55	86	....	cwt	....
Sirup	30	39	3	gals 127,000	6
Dried fruit	12	34	5	lbs 11,394,060	14
Canned foods	336	273	42	cases 1,963,770	47
Cottonseed	38	53	....	tons	....
Cold-pack fruit	9	32	3	lbs 9,588,000	9
Seeds	12	56	4	cwt 385,700	20
Cherries in brine	5	16	4	lbs 2,475,000	13
Combinations	37	34	11	(1)	4
Total:					
Week	7	17	11	....	14
To date	4,580	8,349	960	....	2,136

[1] CAPACITY (COMBINATIONS)

Cotton	bales	211,100	Potatoes	cwt	....
Grain	bushels	902,563	Sirup	gallons	....
Wool	lbs	318,000	Dried fruit	lbs	....
Tobacco	lbs	103,400,000	Canned foods	cases	14,000
Peanuts	tons	6,340	Cottonseed	tons	....
Pecans	lbs	....	Cold-pack fruit	lbs	....
Broomcorn	bales	....	Seeds	cwt	....
Beans	cwt	304,000	Cherries in brine	lbs	....

[82] Compiled from the weekly report of the Bureau of Agricultural Economics. "Combinations" refers to warehouses in which more than one product is stored.

SUMMARY OF ARGUMENT

I

A. The United States Warehouse Act is not a compulsory measure, but rather a permissive statute which allows warehousemen to receive the benefits of Federal supervision. Although appellant submits that the Act would be valid as applied to appellee even with this feature absent, its presence, eliminating any direct clash of Federal and State power, and emphasizing cooperative effort, must be given great weight in determining whether Congress has encroached upon the powers of the States.

B. The relationship of warehouses to interstate commerce is not problematical, indirect or remote. The marketing of the South's cotton requires a volume of credit beyond the capacity of local financial institutions, and warehouses, issuing warehouse receipts of wide and ready acceptability, supply the chief medium by which credit can be obtained from the financial centers. Without adequate credit, growers would be forced to sell during the harvesting season, with consequent wide and disturbing seasonal fluctuations in price. Much cotton which was not sold would be stored improperly, much of it would be destroyed or damaged. In particular, buyers, not only those operating locally but also those who buy large stocks in the concentration centers, would be seriously handicapped by lack of funds. Wide acceptance of this voluntary Act indicates its important function.

Warehouses like the present one, located in Mississippi, have a particularly close relationship to the interstate movement of cotton, because almost all of the Mississippi cotton ultimately leaves the State. Its journey is in two stages, the former from the gin to the warehouse, the latter from the warehouse to another State or foreign country, but the flow is definite and well recognized. Warehouses may therefore be allowed to submit their operations to Federal supervision because of their intimate relation to and connection with this flow.

The facts in *Stafford* v. *Wallace,* 258 U. S. 495, are, in essential details, similar to those in the present case. In each, intrastate activity is subject to Congressional power because of its intimate relationship to an interstate flow of goods. That the warehouses in the present case affect the current before it leaves the State of origin is not an essential difference, for the relationship to the current can be equally direct at that stage. Several decisions recognize that the commerce power of Congress allows it to regulate activity within the State of origin. Nor is it material that the activity affected is also within the taxing power of the States, as many cases have heretofore recognized. *Federal Compress Co.* v. *McLean,* 291 U. S. 17, and *Chassaniol* v. *City of Greenwood,* 291 U. S. 584, are thus not contrary authority. Indeed, they give express recognition to the governmental purposes of the Warehouse Act, and contain no intimation that those purposes are beyond the power of Congress.

Schechter Poultry Corp. v. *United States,* Nos. 854 and 864, October Term, 1934, denied only the existence of Congressional power after the goods had reached the State of final destination and had become mingled with the mass of goods therein, and is consequently not inconsistent with Congressional power in the present case.

It is not necessary, however, to sustain the validity of the Warehouse Act as applied to appellee, to find that warehouses such as the present one are within or closely connected with the interstate flow of cotton, for Congress may supervise activity of any character which has a direct and substantial effect upon interstate commerce. If the effect is direct and substantial, Congress may not only remove burdens on that commerce, but may also enact legislation designed to foster and promote it, as many decisions illustrate. Particularly should it be allowed to foster it by voluntary measures, for that mode of accomplishing its purposes does not give rise to the usual countervailing considerations arising from the burdens incident to mandatory universal conformity and from the superseding of the law-making powers of the States.

The effect upon commerce must be "direct" and "substantial", but in each case that is a question of fact. The operation of warehouses is so vital to the interstate movement of cotton that it is clearly within the scope of those concepts, as their limits have been pricked out by the cases.

II

Even though all the activities of a warehouse in which goods are stored for interstate or foreign commerce may not be put voluntarily under the supervision of Congress, the warehouse receipts, as instrumentalities of interstate commerce, may be protected by the imposition of criminal penalties such as those here sought to be imposed upon the appellee. The receipts have such an essential function in the marketing of the cotton crop, and move in interstate commerce themselves to such a large extent, that they may be protected by Congress for the same reasons that it protects interstate and foreign bills of lading. *United States* v. *Ferger*, 250 U. S. 199. The protection of the warehouse receipt, by making it a crime to withdraw the commodity which it represents, is as necessary as provisions forbidding forgery or alteration and is indeed afforded by the same section of the statute.

III

If upon any of the foregoing bases, the Warehouse Act, as applied to the appellee, is a proper exercise of the commerce power of Congress, criminal sanctions are proper to make its regulations effective. Each individual act which might interfere with the functions of the warehouse and its receipts may be punished, in order to prevent the cumulative effect which would arise from its constant repetition. That the Act is voluntary does

not prevent the punishment of one who illegally interferes with a licensed warehouse, even though he may be legally a stranger to it. *Westfall* v. *United States*, 274 U. S. 256.

The remaining assignments of error are briefly argued (pp. 49–50, *infra*) and do not warrant repetition here.

ARGUMENT

I

THE EXTENSION OF VOLUNTARY SUPERVISION OVER WAREHOUSES IN WHICH GOODS ARE STORED FOR INTERSTATE OR FOREIGN COMMERCE IS, AS APPLIED TO APPELLEE, A VALID EXERCISE OF THE POWER OF CONGRESS

A. THE VOLUNTARY NATURE OF THE WAREHOUSE ACT

At the outset it should be noted that the Warehouse Act is not a compulsory measure, but rather one by which individual warehousemen may, if they so desire, be licensed by the Secretary of Agriculture and avail themselves of the advantages of Federal supervision. Although appellant submits that the Act, as applied to appellee, could be sustained as a valid exercise of the commerce power even though it was mandatory, the fact that it is not of that nature, but merely permissive, must be of great weight in determining whether Congress has encroached upon the powers reserved to the States by the Tenth Amendment. Under this Act there is no direct clash of Federal and State power; no Congressional action which ousts the States

from all control, even over warehouses in which goods are stored for interstate or foreign commerce."[33] The aim is, rather, Federal aid and cooperation in the efforts of the States to provide warehouses to facilitate the movement of cotton in an orderly manner."[34] The Act does not set up Federal instrumentalities, nor remove the licensees from the taxing power of the States. (*Federal Compress Co.* v. *McLean*, 291 U. S. 17). In addition, it is clear that the criminal sanctions imposed by the

[33] Cf. *Schechter Poultry Corp.* v. *United States*, Nos. 854 and 864, October Term, 1934: "But the statutory plan is not simply one for voluntary effort. It does not seek merely to endow voluntary trade or industrial associations or groups with privileges or immunities * * *. If valid [the codes], place all persons within their reach under the obligation of positive law, binding equally those who assent and those who do not assent." See also *Westfall* v. *United States*, 274 U. S. 256, 259; *Hiatt* v. *United States*, 4 F. (2d) 374, 377 (C. C. A. 7th).

[34] Section 9 of the Warehouse Act provides (7 U. S. C., Sup. VII, 269): "In the discretion of the Secretary of Agriculture he is authorized to cooperate with the State officials charged with the enforcement of State laws relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; * * *." The phrase immediately following, which was added in 1931, providing that "the power, jurisdiction, and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect" does not change the permissive nature of the Act, but merely allows the Act to stand on its own bottom. This change was made because it was found that Federal warehouse receipts could not be completely acceptable so long as it was necessary for a banker to be familiar with the laws of each State, to which the

present Act (7 U. S. C., Sec. 270) do not supersede, but only supplement any criminal sanctions which may be applied by the State to prevent the same crimes. *United States* v. *Lanza*, 260 U. S. 377; *Fox* v. *Ohio*, 5 How. 410, 435; *United States* v. *Marigold*, 9 How. 560, 569.

B. THE OPERATION OF COTTON WAREHOUSES IN FACILITATING AND PROTECTING THE MOVEMENT OF COTTON OUT OF MISSISSIPPI IS INTIMATELY RELATED TO AND HAS A DIRECT AND SUBSTANTIAL EFFECT UPON INTERSTATE COMMERCE

The general outline of the methods of cotton marketing which has been previously presented (pp. 7–18, *supra*), shows clearly that the relationship of warehouses to this interstate movement of cotton is not remote or problematical. This picture may be summarized as follows:

Marketing of the cotton crop of the South requires an enormous amount of credit. This credit the local banks are utterly unable to supply (pp. 17, 19, *supra*) and it can be obtained from the large financial centers of the country only if there is a collateral basis for loans which meets the approval of

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Federal Act had theretofore been subservient. See S. Rep. No. 1775, 71st Cong., 3rd sess., p. 2.

That cooperative effort, rather than conflict, has been the result, is evident from the fact that in North and South Carolina the State warehouse superintendents, who are lessees of all cotton warehouses in order to facilitate State supervision, license them all under the Federal Act. See Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931), 15 Minnesota Law Rev., pp. 292, 315–316.

the central banking institutions. Warehouses, issuing warehouse receipts of known value and wide acceptability supply the chief medium by which the local banks are enabled to supplement their own resources.

The situation prior to the passage of the present Act illustrates the obstacles to the free movement of cotton which would exist if this basis of credit were destroyed. Producers, unable to borrow on their harvested cotton to meet their maturing production loans, would be forced to sell immediately, flooding the market and accentuating the seasonal variation in price (see p. 8, *supra*), with resultant disorganization of orderly marketing. With warehouse receipts furnishing only an indifferent basis of credit, the chief incentive for warehousing would be gone, and much cotton that would otherwise move in interstate commerce would be destroyed or rendered unmarketable by "country damage" arising from storage on the ground or in inadequate sheds. Buyers, particularly, would be seriously curtailed; even buyers in large centers, who otherwise can operate on a reasonable amount of cash and a very large amount of credit secured by pledging the warehouse receipts for their previous purchases, would be hampered, and the movement of the crop would be further delayed and disturbed. The United States Warehouse Act, though purely voluntary, has been utilized by a very large proportion of the cotton warehouses in the South, and meets the approval of both the banks and the dealers, as

a service of the greatest value in marketing the cotton crop.

This disturbance would be particularly great in Mississippi, for practically all of the cotton produced in that State eventually moves in interstate commerce. From the time it leaves the local gin until it reaches the mill in some other State or in a foreign country, over 95 percent of the cotton moves, with more or less rapidity, out of Mississippi. After its movement has begun, but before it leaves that State, its journey may be interrupted by a period of storage in a warehouse, usually not for long. If the warehouses are properly supervised, they will stimulate and assist the flow; if they are not it may be burdened. The interstate movement itself is definite, inevitable. Even transportation facilities do not take into account its temporary pauses; freight rates are through rates from the point of origin to the point of destination, not combination rates from the point of origin to the warehouse in the concentration center, such as Clarksdale, and from the warehouse to the destination. See p. 20, *supra*; *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 19–20. Cotton produced in the South is destined for interstate movement to the mills of the North and East as surely as the grain or livestock from the West is destined for shipment to similar manufacturing and consuming centers. *Board of Trade* v. *Olsen*, 262 U. S. 1; *Stafford* v. *Wallace*, 258 U. S. 495; *Lemke* v. *Farm-*

ers Grain Co., 258 U. S. 50; *United States* v. *Patten*, 226 U. S. 525.

The situation is essentially similar to that involved in *Stafford* v. *Wallace*, 258 U. S. 495. The Packers and Stockyards Act of 1921, which was there sustained, provided for supervision and control of facilities for the purchase, sale, and handling of livestock in the stockyards, with the direct object of securing a free and unburdened flow from the Western ranches to the Eastern consuming States. Like a warehouse, the stockyard was not a final destination, but, as the Court described it, only "a throat through which the current flows." (P. 516.) The practices which that Act condemned were, even though local in their nature, held subject to Congressional control because they were a burden on the commerce which they should instead have facilitated. See also *Board of Trade* v. *Olsen*, 262 U. S. 1; *Swift & Co.* v. *United States*, 196 U. S. 375; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 439. That the operation of warehouses, like the operation of stockyards, is a business which is subject to legislative control is not open to question. *Munn* v. *Illinois*, 94 U. S. 113; *W. W. Cargill Co.* v. *Minnesota*, 180 U. S. 452; *Merchants Exchange of St. Louis* v. *Missouri*, 248 U. S. 365; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50.

It is true that in *Stafford* v. *Wallace*, *supra*, the activity to which the power of Congress was extended occurred after the stock had left the State of origin, while in the present case the flow of

cotton passes through warehouses such as the one here involved before it leaves Mississippi. That fact, however, cannot limit the scope of the commerce power, as in each case the actual impact of Congressional regulation is upon intrastate activity which, considered apart from the relation it bears to the flow of products among the States, would be without the ambit of Congressional supervision or control. See *Board of Trade* v. *Olsen*, 262 U. S. 1, 34. Clearly, that relationship can be equally direct when the current is affected before the goods have left the State in which they originate. It is not necessary to consider whether Congress may prevent activity which chokes the current at its source, for in the present case the movement of the cotton has definitely begun before it reaches the warehouses.

Several decisions of this Court recognize that this flow of commerce may be vitally affected by forces which act upon it within the State of origin. *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, is peculiarly applicable. In that case a North Dak statute requiring purchasers of grain to obtain a license and pay a fee, and regulating the weighing, grading, and inspection of the grain and the prices paid for such services was held an invalid burden on interstate commerce as applied to a purchaser who bought grain and loaded it immediately into box cars with the intention of shipping it to Minneapolis. If sufficiently high local prices had been offered, his shipments might have been diverted to

points within North Dakota, but his usual course of business was to send the grain out of the State immediately. The point of time at which the State act impinged was clearly prior to the beginning of the final movement out of the State, but, once the regular flow of goods out of the State had been established, the Court found no difficulty with that fact. The same result was reached under similar circumstances in *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, and *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277. Cf. *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295. See *Local 167* v. *United States*, 291 U. S. 293, 297.

It is clearly recognized in *Stafford* v. *Wallace*, *supra*, that cases which define the limits of non-discriminatory state taxation do not determine the extent of the Congressional power of regulation. See 258 U. S. 495, 525–26. *Minnesota* v. *Blasius*, 290 U. S. 1, affords an excellent illustration. Although Minnesota had levied a general property tax upon the cattle which had temporarily come to rest in the taxpayer's stockyards, and although this Court stated that the operation of the stockyard was "manifestly" so related to the current of commerce as to be within the scope of Congressional regulation, it said (p. 8):

> • • • because there is a flow of interstate commerce which is subject to the regulating power of Congress, it does not necessarily follow that, in the absence of a conflict with the exercise of that power, a State may

not lay a non-discriminating tax upon property which, although connected with that flow as a general course of business, has come to rest and has acquired a situs within the State.

The same distinction was recognized in *Swift & Co. v. United States,* 196 U. S. 375, 400, and *Bacon v. Illinois,* 227 U. S. 504, 516. So long as the state tax or regulation does not burden interstate commerce or conflict with Federal law, the same activity may be subject to both State and Congressional action.[35]

This at once reveals the distinction between the present case and *Federal Compress Co.* v. *McLean,* 291 U. S. 17, and *Chassaniol* v. *City of Greenwood,* 291 U. S. 584, upon which appellee will no doubt rely. In the *Federal Compress* case Mississippi had imposed a non-discriminatory tax upon the business of compressing and warehousing cotton. The Federal Compress & Warehouse Company, which had been licensed under the United States Warehouse Act, assailed the validity of the tax as applied to it, both on the ground that it was a Federal instrumentality and as such exempt, and also on the theory that the tax was a burden on interstate commerce. Neither objection was found

[35] Compare *Bacon* v. *Illinois,* 227 U. S. 504, and *Dickson* v. *Uhlman Grain Co.,* 288 U. S. 188, with *Board of Trade* v. *Olsen,* 262 U. S. 1 (grain exchanges); *Minnesota* v. *Blasius, supra,* with *Stafford* v. *Wallace, supra,* (stockyards); *Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172, with *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295 (mining).

valid. That by virtue of the Federal license the warehouse was such an instrumentality of the national government as to render it immune from state taxation was denied for the reason that the business was still a private one for profit, not a governmental enterprise. Cf. *Broad River Power Co.* v. *Query*, 288 U. S. 178, 180. That the tax was a burden on interstate commerce was also denied, for the reason that the privilege taxed, being one that was exercised before the actual movement into interstate commerce was begun, was too remote to constitute a substantial burden on it. Cf. *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 129.

The opinion gives no indication that the State power to tax the warehouse is inconsistent with the existence of a Congressional power to allow the same warehouse to subject itself to Federal supervision if it wishes. Indeed, the opinion specifically points out that the exercise of the State power in no way conflicts with the present Act and adds that the purpose of the Act is to secure "a means of control over those engaged in the business of storing agricultural products who find it advantageous to apply for the license * * * in the furtherance of a *governmental purpose* to secure fair and uniform business practices." (P. 23. Italics supplied.) No intimation is given that Congress was without power to allow such licenses to be taken out under Federal supervision."

" The Warehouse Act has been referred to by this Court on numerous other occasions, and no intimation has ever been

Nor is there any indication that the burden on interstate commerce was viewed as any more than a question of fact. It is submitted that had the state law been found to have a substantial effect on the current of interstate commerce in cotton, as was true of the state regulation of dealings in grain in *Lemke* v. *Farmers Grain Co.*, 257 U. S. 50, it would have been declared invalid. In this respect the decision is essentially like those in *Munn* v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *Stoeser*, 153 U. S. 391;

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given that it is invalid. *Chassaniol* v. *City of Greenwood*, 291 U. S. 584, 586; *Merchants Exchange of St. Louis* v. *Missouri*, 248 U. S. 365, 368; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 60. Its constitutionality has also been assumed in numerous cases before the lower federal courts, *Young & Jones* v. *Hiawatha Gin Co.*, 17 F. (2d) 193 (S. D. Miss.); *Crittenden & Co.* v. *North British & Mercantile Insurance Co.*, 23 F. (2d) 526 (S. D. Miss.), 31 F. (2d) 700 (C. C. A. 5th); *Central States Grain Co-operative, Inc.*, v. *Nashville Warehouse & Elevator Corp.*, 48 F. (2d) 138 (C. C. A. 7th), and in several decisions of the State courts. *Alabama Warehousing Co.* v. *State*, 227 Ala. 258; *Maryland Casualty Co.* v. *Washington Loan & Banking Co.*, 167 Ga. 354; *Maryland Casualty Co.* v. *Johnson Co.*, 167 Ga. 365; *National Bank of Wilkes* v. *Maryland Casualty Co.*, 167 Ga. 737; *Southern Cotton Oil Co.* v. *Merchants' & Citizens' Bank*, 176 S. E. 392 (Ga.); *Sams Co.* v. *Jewell-Loudermilk Co.*, 42 Ga. App. 676; *Armstrong* v. *Sisti*, 242 N. Y. 440; *Lacy* v. *Hartford Accident & Indemnity Co.*, 193 N. C. 179.

Several unreported cases have also enforced the criminal penalties imposed. In *United States* v. *Gresham* (W. D. Okla. 1925), a demurrer raising the question of unconstitutionality was overruled. In four other cases pleas of guilty were entered. *United States* v. *Burts* (S. D. Ga. 1925); *United States* v. *Potter* (Colo. 1927); *United States* v. *Tarpley* (N. D. Ga. 1928); *United States* v. *Coffee* (S. D. Ga. 1930).

W. W. Cargill Co. v. *Minnesota,* 180 U. S. 452; and *Merchants Exchange of St. Louis* v. *Missouri,* 248 U. S. 365. In each the burden imposed upon interstate commerce by state warehouse laws, considered as a question of fact, was found to be too remote. It by no means follows, as the cases cited above demonstrate, that the relationship of the activity which was the subject of the state tax to interstate commerce is so remote as to be without the scope of Congressional supervision, especially if it is extended only to those who desire it. In other words, the fact that a non-discriminatory tax on warehouses which deal with goods within a current of interstate commerce is not a burden on that commerce sufficient to invalidate the law as so applied, does not require the conclusion that the connection between the warehouses themselves and that commerce is not such as to warrant the extension to them of a licensing privilege by the Federal Government.

Chassaniol v. *City of Greenwood, supra,* stands on the same basis. Another Mississippi tax, imposed on persons buying or selling cotton, was there sustained as applied to buyers who purchased with the intention of exporting, but not directly for interstate sale. The Court recognized that the greater part of the cotton thus bought and sold eventually left the State but inasmuch as the transactions were, in themselves, intrastate, they were not beyond the state power to tax. In stating that *Stafford* v. *Wallace,* 258 U. S. 495, *supra* (which sustained the ex-

ercise of Federal power), was in harmony with this result, the decision cited *Minnesota* v. *Blasius*, 290 U. S. 1, in which, as pointed out above, clear recognition had been given to the concurrent scope of the taxing power of the States.

Nor is a Congressional power to control activities which, while wholly within the State of origin, are within or connected with a well-defined interstate flow, inconsistent with the fact that Congressional power ceases when the goods have reached the State of destination and become mingled with the mass of property within that state. *Schechter Poultry Corp.* v. *United States*, Nos. 854 and 864, October Term, 1935. The basis of that doctrine was there stated to be that the property:

> had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other States. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here.

Each of the factors which are said to be absent in the *Schechter* case are present in the instant one. Appellant submits, therefore, that the action of Congress in allowing warehouses such as the one involved here to become subject to Federal super-

vision is a proper exercise of the power of Congress over activities directly related to the well-defined current of commerce in cotton flowing out of Mississippi.

It is not necessary, however, to sustain the validity of the Warehouse Act as applied to appellee to find that warehouses such as the one here involved are within or directly connected with the flow of interstate commerce. If this Court determines that warehousing precedes the beginning of that flow, appellant submits that the facts already stated show that its effect on the interstate commerce in cotton is so direct and substantial that in order to foster and protect that commerce Congress may allow warehouses such as the present one to come under Federal supervision.

The scope of the commerce power has been stated by this Court to be "the power to enact 'all appropriate legislation' for its protection and advancement * * *; to adopt measures 'to promote its growth and insure its safety' * * *; 'to foster, protect, control, and restrain.'" *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570; *Second Employers' Liability Cases,* 223 U. S. 1, 47; *Mobile County* v. *Kimball,* 102 U. S. 691, 697; *The Daniel Ball,* 10 Wall. 557, 564. Past decisions have also made it clear that Congressional power extends not only to strictly interstate matters but also to any and all kinds of intrastate activity which are found to burden or affect interstate commerce in a substantial manner. *United States*

v. *Ferger*, 250 U. S. 199, 203; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Loewe* v. *Lawlor*, 208 U. S. 274; *Houston & Texas Ry.* v. *United States*, 234 U. S. 342; *Minnesota Rate Cases*, 230 U. S. 352; see *Schechter Poultry Corporation* v. *United States*, Nos. 854 and 864, October Term, 1934.

The decisions of this Court show many instances in which the power of Congress to enact legislation for the "protection and advancement" of commerce and to "promote its growth" have been sustained. Clearly, the power of Congress is not restricted to removing physical obstructions [37] or the burdensome effect of state laws [38] or of the action of individuals.[39]

The outstanding examples of the exercise of this power to foster and advance commerce are to be found in the transportation field. The *New England Divisions Case*, 261 U. S. 184, and *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, are illustrative of assistance given by Congress to the weaker railroads, in order that the general level of

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[37] E. g., *In re Debs*, 158 U. S. 564.

[38] E. g., *Lemke* v. *Farmer's Grain Co.*, 258 U. S. 50; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *Robbins* v. *Shelby County*, 120 U. S. 489; *International Text Book Co.* v. *Pigg*, 217 U. S. 91.

[39] E. g., *Northern Securities Co.* v. *United States*, 193 U. S. 197; *United States* v. *Patten*, 226 U. S. 525; *Binderup* v. *Pathe Exchange*, 263 U. S. 291; *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295; *United States.* v. *Joint Traffic Ass'n*, 171 U. S. 505.

service might be raised. *Atlantic Coast Line R. R. Co.* v. *Riverside Mills,* 219 U. S. 186, in which the Carmack Amendment, making the initial carrier liable for loss of goods delivered over connecting lines, was upheld, is a further illustration of the power of Congress to facilitate and promote interstate shipments. This Court has approved congressional action to promote efficiency in the transaction of interstate commerce, not only by protecting the safety of those engaged in interstate transportation and the safety of goods in the course of such transportation (*Southern Railway Co.* v. *United States,* 222 U. S. 20), but by limiting the continuous hours of service (*Northern Pacific Ry. Co.* v. *Washington,* 222 U. S. 370), and by abolishing the common-law doctrine as to fellow-servants and limiting the defences of assumption of risk and contributory negligence (*Second Employers' Liability Cases,* 223 U. S. 1). The decision in *Railroad Retirement Board* v. *Alton R. R. Co.,* 295 U. S. 330, is not opposed to the extension of Federal assistance in the present case. The question in that case upon which the Court divided was whether old-age security for railroad employees had any effect on promoting efficiency at all. No intimation was given that in any case in which an effect of more than problematical weight was found, Congress had no power to act. For present purposes the most significant case is that of *United States* v. *Ferger,* 250 U. S. 199, in which a statute punishing the

forging of interstate bills of lading was upheld, for the reason that the utility of all interstate bills of lading would be substantially impaired if false ones were not prevented. Furthermore, it is submitted that the principle recognized in these decisions applies with especial force in the present case because of the absence—due to its wholly voluntary nature—of the countervailing considerations in such decisions of the burden upon all individuals of conforming to the Congressional regulation and of the superseding of otherwise sovereign powers of the States.

There is also precedent for Congressional action to prevent price fluctuations and consequent market disturbances, such as are inevitable in the marketing of cotton if the basis of credit is weakened and more producers are forced to sell during the marketing season to meet their obligations (see p. 8, *supra*). The prevention of similar fluctuations in the price of grain on the Grain Exchanges are the object of the Grain Futures Act sustained in *Board of Trade* v. *Olsen*, 262 U. S. 1. Cf. *United States* v. *Patten*, 226 U. S. 525; *Swift & Co.* v. *United States*, 196 U. S. 375; *Stafford* v. *Wallace*, 258 U. S. 495.

It is acknowledged, of course, that Congress is limited in its action to those things which will, in fact, foster and promote interstate commerce in more than a remote and improbable way. What is "remote" or "problematical" must in each case

be a question of fact, but the prior decisions of this Court which have sustained Congressional action in various fields show clearly that the present Act, which, as a wholly voluntary measure, has met with wide acceptance as an aid to efficient interstate commerce in cotton, eliminates a hindrance which is present and direct.

In *Colorado* v. *United States,* 271 U. S. 153, and *Florida* v. *United States,* 292 U. S. 1, the Court sustained orders of the Interstate Commerce Commission, in the first case authorizing the abandonment of an unprofitable spur lying wholly within the State, and in the latter setting aside certain unremunerative intrastate rates, on the ground that the losses which would otherwise be incurred in each case might prejudice the carrier's ability efficiently to serve interstate commerce, although the changes in each case amounted to less than 2 percent of the carriers' *net* railway operating income. The disorganization which would result from a weakening of the credit structure upon which interstate trade in cotton is now built stands in sharp contrast with the isolated and sporadic disturbances created by strikes at a particular plant (*Coronado Coal Co.* v. *United Mine Workers of America,* 268 U. S. 295), by the distribution of premiums in penny-candy packages (*Federal Trade Commission* v. *Keppel & Bro.,* 291 U. S. 304), and by the size of the fees paid to livestock brokers at stockyards (*Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420).

II

WAREHOUSE RECEIPTS FOR COTTON ISSUED BY WAREHOUSES SUCH AS THE ONE INVOLVED IN THE PRESENT CASE ARE INSTRUMENTALISTS OF INTERSTATE COMMERCE AND HENCE WITHIN THE POWER OF CONGRESS TO PROTECT

Appellant has argued heretofore that Congress may extend the privilege of a Federal license to cotton warehouses, either because they were within or closely connected with a current of interstate commerce, or because this operation had a direct and substantial effect upon that flow. If neither of these bases will support the wide power to allow warehouses to submit their complete manner of operation to the supervision of Congress, appellant submits that the criminal penalties sought to be imposed upon appellee may be supported as a proper means of preserving the value and acceptability of warehouse receipts, and making them more efficient and satisfactory instrumentalities in producing and sustaining the commerce in cotton among the States.

Warehouse receipts have such an essential function in marketing the cotton crop of the South (pp. 7–10, 16–18, *supra*) that any factors which tend to make the receipts unreliable, and hence not easily transferable in the channels of credit, seriously impedes the movement of that crop. The importance of warehouse receipts for agricultural products which are to move in interstate commerce is by no means

confined to cotton,[40] but in the marketing of that crop they are of preeminent importance in furnishing the medium for the credit which the local financial institutions cannot supply.

Not only do the receipts bear a very direct relation to the efficient and orderly flow of the cotton in interstate commerce, but they frequently become articles of interstate commerce themselves. As stated above (p. 18, *supra*), the receipts are sent out of the State for use in meeting obligations under future contracts, mills in other States purchase cotton by acquisition of the receipts, and loans are frequently negotiated by sending the receipts from the local bank to the large financial center. It is only reasonable to suppose that the receipts from the warehouses of Clarksdale, situated as it is less than a hundred miles from Memphis, Tennessee, and about equidistant between St. Louis and New Orleans find their way frequently to the banks and markets in those places.[41]

The present Act is an attempt to make the warehouse receipt as useful as possible in facilitating

[40] See Hanna, *The Protection of a Holder of a Warehouse Receipt* (1931), 15 Minn. L. Rev. 292, 316.

[41] The amount of credit supplied to cotton marketing by these three cities is very large. During the three-year period, 1919–1922, Memphis ranked fourth among the cities of the United States in this respect, and New Orleans and St. Louis ranked second and sixth, respectively. The average maximum borrowing in these cities for cotton marketing was $23,978,963.50, or almost 20 percent of the total amount supplied. Cotton Financing, *supra*, p. 36.

this interstate flow. The Act recognizes that the receipt is fully acceptable only if the banks and the buyer can rely on its genuineness, the truth of the statements contained in it, and the fact that the cotton will be in the warehouses, in good condition, when the receipt is presented. By the Act and the regulations promulgated thereunder by the Secretary of Agriculture each of these factors is assured. The receipts themselves are, as has been above indicated, printed on special paper, numbered consecutively, and preserved after cancellation, and particular precautions are taken if duplicates are necessary to replace any which may be lost or destroyed. The Act itself provides for the licensing of the people who weigh, sample, grade, and classify, with the object of assuring the prospective taker of the receipt that the statements contained have been made by experienced men. That this service is a necessary feature of the scheme is indicated by the large number of people who have been licensed under it.[42] Finally, adequate bonds and insurance are required, and the warehouse itself must be properly constructed and located. That all the requirements are met is assured by frequent inspection. The fact that the Act has been so widely accepted demonstrates that any weakening of these guaranties of the quality of the receipts would seriously hamper the cotton marketing process.

[42] The latest weekly report of the Bureau of Agricultural Economics shows that 884 people had been licensed as classifiers, weighers, etc., in cotton and a total of 2,136 in all products which may be stored in licensed warehouses.

Appellant submits that the present case is in no way different from *United States* v. *Ferger*, 250 U. S. 199, in which the power of Congress to protect bills of lading used in interstate and foreign commerce was sustained. The functions of the two types of commercial paper is essentially similar. The protection of both is necessary for "securing and fructifying the flow of a vast volume of interstate commerce" and to both are equally applicable the Court's statement that "the faith and credit given to their genuineness and the value they represent are the producing and sustaining causes of the enormous number of transactions * * *" (p. 204). The extensive use of the warehouse receipt and the dependence of the free flow of cotton in interstate commerce upon its wide and ready acceptability show clearly that Congress may at least offer to assist the flow by extending the advantages of a Federal warehouse receipt, of unquestioned value, to those who desire to avail themselves of the privilege.

III

IF THE WAREHOUSE ACT, AS APPLIED TO APPELLEE, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE, CRIMINAL SANCTIONS MAY PROPERLY BE USED TO MAKE ITS OPERATION EFFECTIVE

The criminal penalties imposed by the Warehouse Act (7 U. S. C., Sec. 270, *supra*, pp. 2–3) are vitally important to its successful operation, for in

no other way can the regulation imposed by the statute be made effective. *United States* v. *Ferger,* 250 U. S. 199, again offers a direct analogy. Forgery of bills of lading was there punished because it would destroy confidence in the genuine bills. Likewise here any illegal removal of the cotton upon which the receipt is bottomed would weaken the general confidence in warehouse receipts. The similarity between the two types of injury to the value of warehouse receipts is further borne out by the fact that Congress has made the two offenses subject to the same penalty and has dealt with both in the same section of the Act. That the single isolated forgery with which the Court was concerned in the *Ferger* case would, in itself, have little or no effect on public confidence in bills of lading generally was no objection to the exercise of congressional power to punish it, nor should the fact that the illegal removal of only three bales of cotton will have slight effect, of itself, in lessening confidence in warehouse receipts be material here. In either case, the cumulative effect of many similar acts can be prevented only by the discouragement of the individual instances. See *Westfall* v. *United States,* 274 U. S. 256, 259.

Nor is it material that a license under the Act is not mandatory. The warehouseman, having received a license, thereby obtains Congressional protection, not only against acts of his own employes harmful to the proper functioning of the

warehouse and its receipts in interstate commerce, but also against acts by those who may be legally strangers to it. *Westfall* v. *United States,* 274 U. S. 256.

IV

THERE WAS NO DEFECT IN THE INDICTMENT

The District Judge construed Section 270, 7 U. S. C., supra, pp. 2–3, to require that an indictment under the section must allege that the property removed was the property of some person, and the name of that person, that there was an intent to defraud the owner thereof, and that it was necessary to allege that the property was of some value. Appellant submits that such a construction is unwarranted by the statute. This Court has jurisdiction on this appeal to pass on such questions, as well as on the constitutionality of the Act. *United States* v. *Keitel,* 211 U. S. 370; *United States* v. *Stevenson,* 215 U. S. 190.

The elements which the District Court found lacking in the indictment might all be requisites of an indictment for common-law larceny, but this is an indictment for a statutory offense. If the words of the statute are fully descriptive of the offense, the indictment need only follow the language of the statute. *Potter* v. *United States,* 155 U. S. 438, 444; *United States* v. *Carll,* 105 U. S. 611, 612; *United States* v. *Simmons,* 96 U. S. 360, 362.

Each count in the indictment (R. 3) follows closely the language of Section 270. The use of

the word "steal" in the indictment may be regarded as surplusage. The statute punishes anyone who may "remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued." The indictment adopts this language, adding that it was "knowingly, willfully, and unlawfully" done. The bale of cotton is accurately described by number. The offense forbidden by the statute is fully described therein, and that offense is clearly made out by the indictment.

It seems unnecessary to comment on the alleged vagueness and indefiniteness of the indictment. It clearly advises the appellee of the charge he is to meet, and any details may be supplied by a bill of particulars.

CONCLUSION

It is respectfully submitted that the decision below should be reversed and the case remanded for further proceedings.

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OCTOBER 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

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No. 22

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In the Supreme Court of the United States

OCTOBER TERM, 1935

THE UNITED STATES OF AMERICA, APPELLANT

v.

FRED HASTINGS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR APPELLEE

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BRIEF FOR APPELLEE

The Act.

Section 270 of the United States Warehouse Act (Act of August 11, 1916, 39 Stat. 486, as amended March 2, 1931, 46 Stat. 1463, U. S. Code, Title 7, Chapter 10) provides punishment by fine of not more than $10,000 or double the value of the products involved if in excess of $10,000, or imprisonment for not more than ten years or both, of "any person who, without lawful authority, shall * * * remove from a licensed warehouse contrary to this chapter (Chapter 10) or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse and for which licensed receipts have been or are to be issued."

The other provisions of the United States Warehouse Act are not pertinent, except as they throw light upon what is meant by the "licensed warehouse," the removal of goods from which is punished as a criminal offense against the United States.

They provide that a warehouseman, meaning any person or corporation in any State engaged in the business of storing agricultural products under the laws of the State in which located, *may* apply to the Secretary of Agriculture of the United States and the Secretary of Agriculture may, if he finds that the warehouse which such person or corporation is conducting is suitable for the proper storage of the particular agricultural product to be stored therein, issue to such warehouseman a "license;" such warehouseman, upon so applying, giving a bond to the United States to secure the faithful performance of his obligation as a warehouseman under the terms of the United States Warehouse Act and regulations made thereunder, and such additional obligations as may be assumed by such warehouseman under contracts with the persons who store agricultural products with him in such warehouse. After receiving such license the warehouse may be designated as a "bonded warehouse."

There are other provisions authorizing the suspension or revocation of such "licenses," and the warehouseman must issue receipts for agricultural products stored in his warehouse, and must deliver the products stored on demand by the holder of receipts or by any depositor of the products, if such demand is accompanied with an offer to pay the warehouseman's lien, surrender the receipt, and acknowledge delivery.

There are further provisions requiring such licensed warehouseman to make reports to the Secretary of Agriculture and to permit certain inspections by government inspectors. By a later amendment it was provided that the "power, jurisdiction and authority conferred upon the

Secretary of Agriculture, under this chapter, shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect." (Sec. 269 as amended Mar. 2, 1931, c. 366 § 9, 46 Stat. 1465.)

As originally enacted, Section 269 of the Act contained a provision: (Aug. 11, 1916, C313, 39 Stat. 490):

> "Nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, or classifiers * * *."

This provision was omitted when the Act was amended in 1931.

Again the criminal provision of the Act (Section 270 referred to above), as originally enacted, omitted the provision for punishment of "any person who, without lawful authority shall convert to his own use or use for the purposes of securing a loan *or remove from a licensed warehouse* contrary to this chapter or to regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse and for which licensed receipts have been or are to be issued." This provision was inserted in the amendment of February 23, 1923, and Section 270 was reenacted March 2, 1931, in substantially the same language, as in the amendment of 1923.

The Indictment.

It was Section 270, above referred to, under which the defendant below was indicted.

The sole charge in the indictment was that the defendant did knowingly, wilfully and unlawfully "remove and steal from and out of" a certain warehouse, naming it, "said warehouse being a duly licensed warehouse * * * under the United States Warehouse Act, * * * a certain bale of cotton," naming it by number, "for which * * * a licensed

warehouse receipt had theretofore been issued * * * contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States."

The entire indictment is found at page 1 of the record, and the first count is set forth in the Brief for the United States, pages 3 and 4.

Contention of Appellee.

The contention of the appellee is that it is not within the constitutional power of Congress to make the removal or stealing of cotton or any other agricultural product that happens to be stored temporarily in a warehouse within a State a federal crime, even though the owner of that warehouse has, upon application, received what is called a "license" from the Secretary of Agriculture of the United States, and is authorized to call the warehouse a "bonded warehouse."

The only constitutional provision that has been suggested or we believe can be suggested, as conferring such power on Congress is the power to regulate interstate or foreign commerce. This is not an excise provision, for there is no federal excise tax imposed upon cotton or its warehousing.

That the mere production, manufacture, holding and storing goods, minerals or agricultural products wholly within the borders of a State before shipped or started or committed to be shipped outside the State, are not transactions in interstate commerce or in the current of interstate commerce, is now so well settled by the decisions of this Court from *Coe* v. *Errol*, 116 U. S. 517 to *Schechter* v. *United States*, (No. 854, 864, October Term, 1934) as to require no extended argument, and Congress cannot there-

fore regulate such state business by criminal statutes making offenses against the United States of any violation of such regulations.

The Argument as to Desirability of Safe Warehouses.

No argument as to the desirability of safe and adequate warehouses for agricultural products in the United States, can change the intra-state character of goods and commodities at rest in the States and not started on an interstate journey, or make "interstate" that which is plainly "intra-state."

In the matter of the power of the Federal Government to punish crime, the distinction between what is and what is not interstate commerce, is so clear and fundamental as to require only a suggestion to explain it.

If it is plain that the carriage of stolen goods across state lines is a matter of federal concern and may be punished by the Federal Government, it does not follow that Congress has the power to punish theft of property in every state in the Union where the property is not in interstate commerce but is a part of the mass of property in the State, over which the State alone has jurisdiction, however convenient it might be to have the Federal Government take over the entire subject. To say otherwise is to ignore completely the limitations on federal power fixed and settled in the Constitution.

The Consequences of a Contrary Doctrine.

The consequences of a contrary doctrine are so manifest as to demonstrate the correctness of the proposition for which appellee contends.

If the protection of property which is solely a matter for state concern can be brought under federal power on the assumption that the property is probably destined for shipment outside of the State, because similar property has been so shipped, then federal police power, limited to inter-

state commerce by the Constitution, is extended over a vast field, the limits of which cannot be foreseen, and the commerce clause would be used either to withdraw from the States a great portion of their authority over crimes within their jurisdiction, or, if not so withdrawn, bring about a concurrent punishment for larceny, burglary, and theft, and actually, if not technically, set up a system of double jeopardy in violation of a basic principle of the Bill of Rights.

The following language of this Court in *Schechter* v. *United States*, Nos. 854, 864, October Term, 1934, is even more pertinent to the situation here than it was to the situation in that case:

> "If the commerce clause were construed to reach all enterprises and transactions which would be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory even the development of the State's commercial facilities would be subject to federal control."

Distinction Upon Which Appellant Relies.

Counsel for the United States confidently relies upon a claimed distinction between the status of goods before they have become a part of interstate commerce or entered upon the interstate journey, and the status of goods after they have ceased to be a part of interstate commerce and ended their interstate journey.

At Page 23 of brief for the United States, it is said that the *Schechter case* "denied only the existence of congressional power after the goods had reached the State of final destination, and became mingled with the mass of goods therein, and is consequently not inconsistent with congressional power in the present case."

And again, at page 37, it is argued that congressional power to control activities within a State of origin is not inconsistent with the fact that congressional power ceased when goods have reached the State of destination and become mingled with the mass of property within the State.

But no such distinction between the antecedent status which precedes interstate commerce and that which follows its termination, has ever been recognized in the long line of cases from *Coe* v. *Errol*, 116 U. S. 517, to the present day.

There is a time when interstate commerce begins and when interstate commerce ends; when a transaction begins to be a part of interstate commerce, of which alone the Federal Government has jurisdiction, and when it ceases to be such interstate commerce. This was recognized more than a century ago by Chief Justice Marshall in *Brown* v. *Maryland*, 12 Wheat. 419. This is just as true of the flow or stream of interstate commerce as it is of the transportation of particular goods across state lines.

Indeed, it is probable that the doctrine of the extent of state power and the limits of federal power originated with a decision of the question as to when movable property began to enter interstate commerce so as to leave the jurisdiction of the States, rather than the question as to when movable property ceased to be in interstate commerce.

In *Coe* v. *Errol, supra*, it is said:

> "When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports *nor are they in process of exportation* nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination or have started on their ultimate passage to that State."

And again in *Arkadelphia Company* v. *St. Louis S.W. Ry. Co.*, 249 U. S. 134, 151, it is said:

> "And the fact that previous experience indicated that 95 per cent. of it (lumber) must be marketed outside of the State, so that this entered into the purpose of the parties when shipping the rough material to the mill, did not alter the character of the latter movement. The question is too well settled by previous decisions to require discussion."

And again in *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 259, the court used this language:

> "If the possibility or indeed certainty, of exportation of a product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof', wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production."

There are few propositions better settled in the discussion of the powers of Congress under the commerce clause than the one that the production and manufacture, holding and storage of commodities wholly within a State, before they are started on their interstate journey, or contracted to be started on their interstate journey, are not "a part of interstate commerce," and are not "in the flow or stream of interstate commerce."

It was so held by this Court as to the very kind of property and the same kind of a warehouse, with which we are dealing in the case at bar, in two recent decisions of this Court.

In *Chassaniol* v. *City of Greenwood*, 291 U. S. 584, following another case at the same term, *Federal Warehouse and Compress Co.* v. *McLean*, 291 U. S. 17, it is said by Mr. Justice Brandeis, speaking for the court:

> "Ginning cotton, transporting it to Greenwood, and *warehousing*, buying and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

This was said of cotton stored in a warehouse licensed under the United States Warehouse Act.

And this is true even though the warehouse is by contract with a railroad company an agent and depot of an interstate carrier.

In the opinion by Mr. Justice Stone, in the *Federal Compress case, supra*, it is said, referring to a warehouse licensed under the United States Warehouse Act:

> "The fact that appellant's contract with the interstate rail carrier has designated appellant as the carrier's agent and appellant's warehouse as the carrier's depot cannot alter the legal consequences of what is actually done with the cotton by its owners or of their power of control over it, or of the actual course of dealing with it by appellant. It is not within the power of the parties, by the descriptive terms of their contract, to convert a local business into an interstate commerce business protected by the interstate commerce clause."

Effect of Licenses.

Nor is the fact that the warehousemen, in whose warehouse the property at rest within the State is stored, is

permitted to apply to the Secretary of Agriculture for what is called a "license" to call himself the operator of a "bonded warehouse" affect the question or change the intra-state character of the property.

Manifestly, it would be an unwarranted extension of the Congressional power to say that the Federal Government can bring within its police powers all movable property in the United States so as to punish as a crime against the Federal Government any unpermitted removal of such property, even contrary to state criminal laws, by the simple expedient of giving to the holder of the property or the bailee of it, some kind of authority or agreement, called a "license" permitting him to say that he was "bonded."

In a broad view of the subject, that would be of substantially the same nature as the plan of the National Industrial Recovery Act (held beyond the power of Congress in the *Schechter Case, supra*) which, by means of codes, did label all business in the United States which came under codes, and did permit all business coming under codes to display the authorization of the now extinct "Blue Eagle" to do business under the sanction of the Federal Government.

Indeed it was a part of the plan of the "NRA" to grant licenses to all business in the United States to engage in interstate commerce as a means of making the codes effective. (Act of June 16, 1933, Chap. 90, 48 Stat. 175, U. S. C. Title 15, sec. 704).

But it was never thought that the license feature or the wings of the "Blue Eagle" converted any transaction or business or property into an "interstate" transaction.

It would be dangerous doctrine, destructive of the separation of powers between the states and the nation, secured by our dual form of government, to hold that those matters and things belonging to the states, with which the Federal Government cannot "meddle"—to use the expression of Mr. Justice Holmes in the dissenting opinion in

Hammer vs. *Dagenhart*, 247 U. S. 251—may be brought within the jurisdiction of the Federal Government merely by a system of "licenses."

We have then the clear conclusion that a warehouse located wholly within a State, receiving goods brought to it from within the State to rest there, and returnable to the owner on demand within the State, the goods in which are not yet started on any interstate journey, and not contracted or committed to be sent on an interstate journey, is not a federal instrumentality and is not in interstate commerce, and the goods stored therein are not in the stream of interstate commerce. The Constitution did not delegate power to the Congress to punish the stealing of such goods.

Cases Cited by Counsel for Appellant.

In all of the cases relied upon by the appellant, where the court has allowed federal regulation antecedent to the point of actual movement in interstate commerce, there has been proof of an actual burden on interstate commerce, or of an intent to restrain and obstruct interstate commerce, or a precedent beginning of the "flow" or "stream of interstate commerce," which flow is not interrupted by a temporary halt.

In *Stafford* v. *Wallace*, 258 U. S. 495, it was held that the Packers and Stockyards Act of 1921 was valid because the cattle at such stockyard was in the stream of commerce among the states and included subordinate activities and facilities which were essential to such movement, and that the stockyards were themselves instrumentalities of such interstate commerce. In the case now before the Court, the cotton stored in the warehouse, as this Court has held in the two recent cases heretofore cited, is not in interstate commerce; the stream of interstate commerce has not begun to flow and the warehouse is not an instrumentality of interstate commerce.

But it is unnecessary to argue the point at length since in the later decisions of this Court, where *Stafford* v. *Wallace* was considered and distinguished, it was made plain by the Court that warehouses of the character of that in the present case were, unlike the stockyards, not instrumentalities of interstate commerce, and the property in them was not in interstate commerce because the stream of interstate commerce had not begun to flow.

So also in the *Schechter Case, supra,* where *Stafford* v. *Wallace* was one of the cases suggested as controlling, this Court distinguished the *Stafford Case* as one involving a practical continuity of movement in the stream of interstate commerce, whereas the handling of poultry intrastate, after it had been shipped in interstate commerce, was not in such stream of commerce because its interstate character had ceased.

So of *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, which rested upon *Stafford* v. *Wallace,* and which was also cited and distinguished in the *Schechter Case, supra.*

In the *Chicago Board of Trade Case,* this Court said "It is impossible to distinguish the case at bar, so far as it concerns the cash grain, the sales to arrive, and the grain actually delivered in fulfillment of future contracts from the current of stock shipments declared to be interstate commerce in *Stafford* v. *Wallace,* 258 U. S. 495."

But in the case now before the Court, the property is not in interstate commerce or in the course of interstate commerce, as held by this Court in the recent decisions referred to.

In *Swift & Company* v. *United States,* 196 U. S. 375, the court was dealing with a conspiracy effectuated by local activities whose direct object was the manipulation of the current of interstate commerce.

The court in *Schechter* v. *United States,* Nos. 854 and 864, October Term, 1934, states the doctrine of the anti-trust cases in the following way:

"Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. Coronado Coal Co. v. United Mine Workers, 268 U. S. 295, 310, 45 S. Ct. 551, 69 L. Ed. 963. But, where that intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes."

• • • • • • •

"While these decisions related to the application of the federal statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the federal power, and for all practical purposes we should have a completely centralized government. We must consider the provisions here in question in the light of this distinction."

The *Hallanan Cases,* 257 U. S. 265 and 277 are clearly distinguishable from the case at bar. There the court found from the proof that the oil and gas entered the "flow of interstate Commerce" as soon as it entered the feed lines which opened into the main pipe lines carrying the oil into other states. The opinion states: "The bailor assents to its becoming part of a stream that is pouring through and out of the state" (p. 272). • • • "It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil started and at which it in fact arrived." And the court in the second

case said, (p. 281), "The great body of the gas starts for points outside the state and goes to them. That the necessities of business require a much smaller amount destined to points within the state to be carried undistinguished in the same pipes does not affect the character of the major transportation."

These cases would be analogous if in the case at bar the cotton had been delivered to an interstate carrier destined for points out of the State, but part of it recalled or stopped before leaving the State of its origin and delivered to points within the State. Even here there is a difference, for the oil and gas is carried in the pipes undistinguished, while cotton is never mingled, but sold in individual and identified bales. In the case at bar the cotton has not started on a journey in interstate commerce, nor has it entered a flow or stream of interstate commerce. It may never go into such commerce.

All the grain bought in *Dahnke-Walker Milling Company* v. *Bondurant*, 257 U. S. 282, as the proof showed, was bought for immediate shipment into Tennessee, and the court found that the Kentucky statute in question, if applied to the facts of the case, would be a burden and obstruction on interstate commerce, for the court found that the buying was a part of interstate commerce as much as the transportation.

The case of *Lemke* v. *Farmers Grain Company*, 258 U. S. 50, was based upon the decision in the *Dahnke-Walker Case, supra*. The Court held a North Dakota statute unconstitutional which sought to license all buyers of wheat and to regulate the weighing and grading, the measure of profit, etc. The Court found, as a matter of fact, that the buying and selling was interstate commerce and that a regulation thereof by the State was a burden on interstate commerce. The proof showed that the grain was purchased, placed into elevators and loaded at once into cars for shipment to Minneapolis and elsewhere outside the State. The Court

did not find that an elevator which was for storage *prior* to sale and shipment was in interstate commerce. In the case at bar, the cotton and cotton warehouses of the character here involved were prior to sale and shipment, were not in interstate commerce and were not a part of interstate commerce, as found by this Court in later cases. Here again, therefore, the cases cited are distinguished by the cases of *Chassaniol* v. *City of Greenwood, supra*, and *Federal Compress & Warehouse Company* v. *McLean, supra*, as well as by the facts of the two sets of cases.

Cases relied upon by the appellant where a common carrier in interstate commerce is involved are obviously distinguishable. Congress has been allowed to deal with intrastate carriers and rates only to the extent to prevent a burden on or obstruction of interstate commerce. Such cases are not here applicable for cotton on storage or cotton warehouses does not obstruct nor burden interstate commerce. In each of the above type of case cited by appellant the court found from proof, as a matter of fact, that such activities did burden or obstruct interstate commerce.

Where the activities did not burden or obstruct interstate commerce, the mere fact that the person or corporation was engaged in interstate commerce, did not subject him or it to all manner of Congressional regulation. To state such a proposition, this Court said, in the *Employer's Liability Cases*, 207 U. S. 463, "is to refute it." Said the Court:

> "It assumes because one engages in interstate commerce, he thereby endows Congress with powers not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well-founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable mat-

ters which, from the beginning, have been, and must continue to be, under their control so long as the Constitution endures."

In *United States* v. *Ferger*, 250 U. S. 199, this court held that the forging and use of false *interstate* bills of lading was within the power of Congress to punish. It was held that bills of lading for the movement of interstate commerce are instrumentalities of that commerce, which Congress had power to regulate. The false bill of lading in that case purported to cover the shipment of corn from one state to another; the spurious bills were in the form of interstate commerce bills, which involved the potentiality of fraud as far-reaching as the flow in the channels of interstate commerce in which it was contemplated the fraudulent bills would circulate. This was certainly an obstruction of interstate commerce. In the case at bar neither the warehouse, the cotton on storage, nor the warehouse receipts are instrumentalities of interstate commerce. The entire transaction involved is prior to any "flow" or "stream" of interstate commerce, and too remote to be a burden, restraint, or obstruction on such interstate commerce.

Appellant urges and advances the theory that the warehouse receipts are instrumentalities of interstate commerce and bring the warehouse and cotton within the power of Congress to regulate. Such a proposition is begging the question. If the warehouse and cotton itself are not within interstate commerce (as this court has held they are not), the mere issuance of a warehouse receipt will not bring them within congressional power. It is only an evidence of title to the stored cotton.

Appellant lays much stress on the fact that bankers lend money with which cotton buyers finance their operations, taking warehouse receipts as collateral for the loans. The mere fact that warehouse receipts might be held as collateral for loans is no justification for Congress exceeding its power under the Constitution.

Loans are made by bankers and financial institutions on mortgages of real estate, personal property, pledges of stocks, bonds, and other security; but the mere fact that such collateral is required before the loan is made, does not subject that collateral to federal regulation, even though the local bank or banker may pledge such with other bankers.

In the case at bar we are dealing with cotton which is alleged to have been stolen and removed by the appellee and an accomplice. It is not alleged that the warehouse receipt covering such cotton has falleh into the hands of any bank or banker, much less that it has passed to some financial center outside of the State. Appellee has as much right to assume that the receipts on the cotton in question are still in the hands of the farmer; but regardless of that, as stated above, the mere fact that the receipt may be used as collateral for a loan is no basis for federal regulation.

Cotton is not bought and sold on warehouse receipts, but each bale is classed individually and sold on samples taken from each bale. The grading of the cotton is not done by the warehouse, but by individual cotton buyers and cotton factors. On the face of each warehouse receipt issued by the warehouse in question there appears in bold letters the fact that the bale of cotton on which the receipt was issued is not graded.

Appellant further stresses the fact that the act requires insurance which in turn makes the receipt more reliable. The insurance is on the warehouse, and not on the cotton stored therein. On the face of each receipt appears the fact that the cotton is not insured. The individual owner of the cotton must carry his own insurance if he wishes to be protected against fire, tornado, floods, etc. The bond is merely for the faithful performance by the warehouseman of his duty to deliver the cotton stored with him to the one presenting the receipt. This is nothing more than any efficient warehouseman does.

The basis for Congressional authority in the case of *Westfall* vs. *U. S.*, 274 U. S. 256, goes back to the case of *McCulloch* v. *Maryland*, 4 Wheat. 316, and the cases following it. Here the conviction of one aiding an officer of a state bank, a member of the Federal Reserve System, to misapply funds of the bank was affirmed. The means used was issuance of a fraudulent certificate of deposit and paying the same from funds of the bank. Congress has power to regulate the Federal Reserve System, and as the court said, (p. 259) "every fraud like the one before us weakens the member bank and therefore weakens the system". Therefore Congress can punish this misappropriation of funds for it was found that such would weaken or burden the Federal Reserve System. In the case at bar the alleged stealing and removal of the cotton does not bear directly, if at all, upon the system of interstate commerce. It is not within the system, nor is the warehouse a member or agency of that system.

Implications of the Government's Contention.

Even if this assumption of federal authority is viewed in its purely practical aspects, it is of some importance whether a citizen, charged with petty larceny, can be tried both by the State and by the United States. Apart from the peril of double jeopardy, and possible double punishment, trial in a Federal Court is not likely to be by a jury of the vicinage. The defendant must go in many cases to a distant forum, and the jury of his peers are not his neighbors who know his character.

We are, however, not chiefly concerned with these purely practical questions. The graver implication of the government's contention is its justification of the expansion of federal police power by the method of licensing. The theory that if the government confers the prestige of its name and authority upon a local enterprise it can assume

all police powers in respect to it, has been slowly developing in this country in the last half century. When the anti-trust agitation was at its height a generation ago, it was then first suggested that the Federal Government could assume complete control over all industrial enterprises by the method of licensing corporations to engage in inter-state commerce. The implications of this project were such that it was not very seriously considered, but in recent years the idea of federal control by the license system has grown amazingly. Under the National Recovery Law the President was given the power to license or refuse to license, and while this was not formally put into effect, yet the provision of the same law, which enabled the Executive not only to approve, but to *impose* a code upon the members of an industry, was in effect an exercise of the so-called licensing power.

Under the Agricultural Adjustment Act the idea was carried into effect, and in the milk trade the Secretary of Agriculture licensed milk dealers, and thus assumed control over them, even if their activities were intra-state. The more recent law, the Potato Control bill contains the same idea, for if put into effect no one can sell potatoes without making application for permission to do so, and if he grows more than five bushels, he is subject to minute governmental regulations, and even if he grows less he must, nevertheless, apply for permission and thus be licensed.

It must be obvious that if every department of the government can require the industrialist, big or little, to become a licensee of the Federal Government, and under conditions that the licensing power may prescribe, our dual form of government in respect to trade and industry is threatened, if not destroyed.

In his Farewell Address, George Washington solemnly warned his and all succeeding generations of Americans that the Constitution could be more easily "undermined" than "directly overthrown." Today the time gives that

prediction proof, and the most effective method of undermining the Constitution is by the doctrine that the Federal Government can usurp the police powers of the States by the simple method of licensing.

If this be conceded, there seems to be no limit to the power of the Federal Government. It can issue licenses to engage in interstate trade, or to use the mails or to make bank deposits, or any other of the normal activities of life. Once recognized as a method of extending the power of the Federal Government, and it will be soon seen how insidious the encroachments will be.

The statute now under consideration was in its first form conservative. It disclaimed any purpose to usurp the police powers of the States. The camel having once lodged its head in the tent, it then proceeded to occupy the tent entirely, and to that end the amendment was passed, which made the federal police power "exclusive," as long as a license was in existence.

The process of supplanting the states in their reserved powers reached a climax when the National Recovery Administration sent the draft of a law to every State and urged its passage, and the vital section of this proposed law was as follows: "Section 2. To effectuate the policies of this Act, the Governor is hereby authorized to consent to the President of the United States utilizing State and local officers and employees in effectuating the policies of the National Industrial Recovery Act in accordance with the provisions of Section 2 (a) of that Act."

It may be that with the centripetal developments of a mechanical civilization, the Constitution is now unworkable in attempting to divide authority between interstate and intrastate activities. We do not concede it, but if such a momentous change is to be made in our form of government, it should be by the orderly process of a constitutional amendment and not by the subtle device of the licensing system.

It is this consideration that gives this case more than ordinary importance. If this Court gives its sanction to the licensing system, a long step will be made to the complete centralization of our government so far as trade and industry are affected.

Defects in the Indictment.

The Court sustained the defendant's demurrer to the indictment upon other grounds, but as these were considerations of general law they are clearly not before this Court on this Appeal. (*United States* v. *Stevenson*, 215 U. S. 190).

Respectfully submitted,

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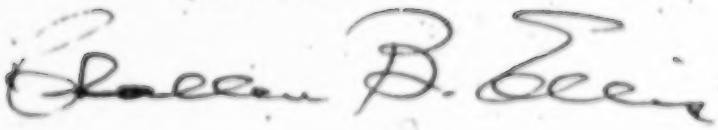

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SUPREME COURT OF THE UNITED STATES.

No. 22.—October Term, 1935.

The United States of America, Appellant, *vs.* Fred Hastings.	Appeal from the District Court of the United States for the Northern District of Mississippi.

[December 9, 1935.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Defendant was indicted in the District Court of the United States for violation of the United States Warehouse Act. 7 U. S. C. 270. The indictment contained three counts, each charging the "removal and stealing" of a numbered bale of cotton from a licensed warehouse contrary to the statute and regulations.[1] The A demurrer was sustained and the Government brings this appeal under the Criminal Appeals Act. 18 U. S. C. 682.

The penal provision of the statute, so far as pertinent here, is as follows:

"Every person who shall . . . . remove from a licensed warehouse contrary to this chapter or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse, and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than ten years, or both, in the discretion of the court, . . ".

[1]The charge in the first count (the other counts being similar) was that defendant (and another) "did knowingly, wilfully, and unlawfully and without any authority of law, remove and steal from and out of the warehouse of the Federal Compress and Warehouse Company, Clarksdale, Mississippi, being the warehouse of said Federal Compress and Warehouse Company known and designated as Plant No. 2, said warehouse being then and there a duly licensed warehouse under and pursuant to the provisions of the United States Warehouse Act, certain agricultural products then and there stored and on storage in said warehouse, to wit: a certain bale of cotton identified on the records of said warehouse as bale of cotton number 407784, for which said bale of cotton a licensed warehouse receipt had theretofore been issued by said Federal Compress and Warehouse Company, the removal and stealing of said cotton from said licensed warehouse being then and there contrary to and in violation of the said United States Warehouse Act and the regulations promulgated thereunder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States."

The District Judge certified his grounds for sustaining the demurrer as follows:

"(1) That said indictment fails to charge any offense against the laws of the United States;

"(2) That the indictment fails to charge that the cotton alleged to have been removed and stolen was the property of any person;

"(3) That the indictment fails to allege the name of the owner of said cotton, and does not charge any intent to defraud the owner thereof;

"(4) That the indictment does not allege the value of the cotton alleged to have been removed and stolen, or that the cotton was of any value;

"(5) That section 270, title 7, of the United States Code, being the section under which the indictment is drawn, is unconstitutional, in that, Congress is without authority under the Constitution to make it an offense against the laws of the United States to remove agricultural products from a Federal licensed warehouse as alleged in the indictment".

1. *The jurisdiction of this Court.* If the first four grounds of the decision, as stated in the certificate of the District Judge, are to be taken as wholly independent of the questions of the construction and validity of the United States Warehouse Act, those grounds may not be challenged on this appeal. The statute conferring jurisdiction on appeal by the Government in criminal prosecutions confines that jurisdiction to cases where the decision of the District Court, on demurrer, motion to quash or in arrest of judgment, "is based upon the invalidity or construction of the statute upon which the indictment is founded", or where the District Court has sustained "a special plea in bar, when the defendant has not been put in jeopardy". 18 U. S. C. 682. The proposal to confer a broader jurisdiction was considered by the Congress and rejected.[2] Thus the construction of the indictment and its sufficiency merely as a pleading, as distinguished from the construction of the statute, are questions for the District Court. We must accept the construction of the indictment as that court gives it. And where that court has rested its decision upon the invalidity or construction of the statute which underlies the indictment, this Court will not go beyond those grounds and consider other objections to the indictment. *United States* v. *Keitel*, 211 U. S. 370, 397, 398; *United States* v. *Miller*, 223 U. S. 599, 602; *United States* v. *Carter*, 231 U. S. 492, 493; *United States* v. *Moist*, 231 U. S. 701,

[2] H. R. Rep. 59th Cong., 1st sess., vol 1, No. 2119; Sen. Rep. 59th Cong., 1st sess., vol. 2, No. 3922; H. R. Rep. 59th Cong., 2d sess., vol. 2, No. 8113.

702; *United States* v. *Colgate*, 250 U. S. 300, 301, 302; *United States* v. *Schrader's Son*, 252 U. S. 85, 98; *United States* v. *Yuginovich*, 256 U. S. 450, 461.

A distinct question is presented where the District Court has not placed its decision solely upon the invalidity or construction of the statute, but has also sustained the demurrer or granted the motion to quash the indictment upon wholly independent grounds of insufficiency. In such a case the judgment of the District Court would remain in effect, and the defendant would go free of the indictment, whatever views we might express upon appeal as to the construction or validity of the statute. We could not reverse the judgment upon questions not before us. An indictment not merely attacked, but found to be invalid on grounds not open here, would be made the vehicle of an effort to obtain from this Court an expression of an abstract opinion, which might or might not fit a subsequent prosecution of the same defendant or others but would not determine the instant case. Review of a judgment which we cannot disturb, because it rests adequately upon a basis not subject to our examination, would be an anomaly.

An analogous situation is found in cases where the jurisdiction of this Court has been invoked on writs of error or appeals from judgments of state courts, and it appears that, notwithstanding the existence of a federal question, and its consideration and determination by the state court, the judgment rests upon a non-federal ground adequate to support it and hence would not be affected by a decision by this Court of the federal question. In such cases, we refuse review. While the earlier practice was to affirm the judgment without considering the federal question, the later practice has been to dismiss the writ of error or appeal. *Murdock* v. *Memphis*, 20 Wall. 590, 634, 635; *Jenkins* v. *Loewenthal*, 110 U. S. 222; *Hale* v. *Akers*, 132 U. S. 554, 565; *Hammond* v. *Johnston*, 142 U. S. 73, 78; *Eustis* v. *Bolles*, 150 U. S. 361, 370; *Enterprise Irrigation District* v. *Farmers Canal Co.*, 243 U. S. 157, 164, 166; *Petrie* v. *Nampa Irrigation District*, 248 U. S. 154, 157; *Ex parte Steckler*, 292 U. S. 610; *Capital Endowment Company* v. *Ohio* (Nov. 11, 1935), 296 U. S. —.

It was in the light of the considerations governing the exercise of the judicial power that the Criminal Appeals Act was enacted and appeals by the Government were subjected to the prescribed limitations. *United States* v. *Evans*, 213 U. S. 297, 300. We think

that the provision which limits the Government's appeal to those cases where the decision or judgment of the District Court is "*based*" upon the invalidity or construction of the statute, should be taken to refer to cases where that determination, and not a wholly independent ground, is the foundation of the judgment. If the judgment is independently based, and in that respect is not open to correction or reversal, we are of the opinion that this Court should not entertain the Government's appeal. To the extent that the opinion in the case of *United States* v. *Stevenson*, 215 U. S. 190, 195, states a contrary view, it is disapproved.

Are the first four grounds stated by the District Judge independent of the construction of the statute? The first ground may fairly be regarded as not a distinct ground, or a finding of the insufficiency of the indictment as a mere matter of pleading, but as intended to be an introduction to the specifications which follow and to be read in their light. Treating the first ground in this sense, and as merely preliminary, we turn to the specifications in the second, third and fourth grounds, which clearly involve the construction of the Act. That is, they go upon the view that the ingredients of the statutory offense are similar to those of common law larceny and that to establish the offense it must be alleged and proved that the cotton in question was the property of a person named, was removed with intent to defraud the owner, and had value. It is the contention of the Government that this is an unwarranted construction and that the words of the statute, which do not contain such requirements, are fully descriptive of the statutory offense.

In his fifth ground, the District Judge expressly deals with the constitutionality of the provision, holding that Congress is without authority "to make it an offense against the laws of the United States to remove agricultural products from a federal licensed warehouse as alleged in the indictment". The concluding words challenge attention to the absence from the indictment of an allegation that the cotton was stored for interstate or foreign commerce. The statement of the District Judge may be taken to be a construction of the indictment as charging simply the removal of the cotton from a federal licensed warehouse which had issued a receipt, without alleging that the cotton was stored for interstate or foreign commerce and that the receipt was issued accordingly. We are not at liberty to construe the indictment otherwise. While

in this view, the present appeal does not bring up the questions broadly discussed at the bar as to products stored for interstate or foreign commerce — questions which must await a different and appropriate record — the appeal does present a narrower but still important question as to the scope of the penal provision. That is, whether Congress sought to exert and, if so, could validly exert, such a measure of control over warehouses operating under federal licenses, as to penalize the removal of products deposited in such warehouses, and receipted for, regardless of the purpose, or the nature of the commerce, for which the deposit was made.

We have jurisdiction to determine these questions of construction and validity.

2. *The construction of the statute.* To construe the penal provision, we turn to its context, to the statutory definition of the terms it employs; and to the purpose thus disclosed.

The Act[3] defines the term "warehouse" as "every building, structure, or other protected enclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored". 7 U. S. C. sec. 242. The Secretary of Agriculture is authorized to make investigations and classifications, to issue licenses and to prescribe the duties of licensed warehousemen, who must give bond for the faithful performance of their obligations. *Id.*, secs. 243-247. The Secretary is also authorized to issue licenses to competent persons to inspect, sample, classify and weigh agricultural products stored or to be stored in licensed warehouses, and to give certificates accordingly. *Id.*, sec. 252. Those conducting licensed warehouses are required to receive for storage, within their capacity, agricultural products of the kind customarily stored by them if such products are tendered "in a suitable condition for warehousing" and "in the usual manner" according to the ordinary course of business, "without making any discrimination between persons desiring to avail themselves of warehouse facilities". *Id.*, sec. 254. Persons who deposit agricultural products for storage in licensed warehouses are to be deemed to have made the deposit subject to the statute and the

[3] Act of August 11, 1916, c. 313, Part C, 39 Stat. 486, amended by Acts of February 23, 1923, c. 106, 42 Stat. 1282, and March 2, 1931, c. 366, 46 Stat. 1463; 7 U. S. C., secs. 241-273.

regulations it authorizes. *Id.*, sec. 255. It is then provided that "Any fungible agricultural product stored for interstate of foreign commerce, or in any place under the exclusive jurisdiction of the United States" in a licensed warehouse must be inspected and graded by a person licensed for that purpose. *Id.*, sec. 256.

The following provision for the issue of warehouse receipts is of special importance:

"For all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this chapter original receipts shall be issued by the warehouseman conducting the same, but no receipt shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof". *Id.*, sec. 259.

The next section prescribes the contents of receipts which may be taken to refer to the receipts required by the provision above quoted. *Id.*, sec. 260.

In the original Act of 1916 it was provided that nothing therein should "be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, or classifiers", but the Secretary of Agriculture was authorized "to cooperate" with state officials and "through such cooperation to secure the enforcement" of the provisions of the Act. Act of August 11, 1916, Part C, Sec. 29, 39 Stat. 490. This section was amended in 1931, so as to provide for cooperation with state officials in the "discretion" of the Secretary, and with the addition that "the power, jurisdiction, and authority" conferred upon the Secretary should be "exclusive with respect to all persons securing a license", so long as the license remains in effect. Act of March 2, 1931, 46 Stat. 1465; 7 U. S. C. sec. 269.

Then follows the provision prescribing penalties for the forging, altering, counterfeiting, etc. of licenses, the issue of false or fraudulent receipts, and the conversion or the unauthorized removal from a licensed warehouse of agricultural products for which "licensed receipts" have been or are to be issued. *Id.*, sec. 270.

The instant case relates to cotton, and the Government emphasizes the salient facts as to the customary movement and marketing of cotton. But the Act is not limited to cotton. Originally, the Act defined "agricultural products" as embracing

"cotton, wool, grains, tobacco and flaxseed."[4] By regulations under the Act as amended, it has been extended to a variety of products.[5] The Act is not limited to one section of the country, or to particular market conditions, but applies generally to warehouses for these varied commodities. The Government points to the permissive character of the statute which, it is said, should have "great weight in determining whether Congress has encroached upon the powers of the States". And Congress could not fail to have in mind that there were warehouses in many States, operating under state laws and serving local demands in intrastate transactions; receiving for storage and issuing receipts for agricultural products in connection with enterprises and trade that are entirely local.

It would need stronger evidence than this Act affords to justify the conclusion that Congress intended that warehousemen, in taking advantage of the federal statute and in issuing warehouse receipts as required by its terms, should submit to federal control the deposit of products and the issue of warehouse receipts in the course of their local business where the products were not stored for interstate or foreign commerce. Despite the broad language of certain sections of the Act, we think that (aside from places within the exclusive jurisdiction of the United States) the limitation to storage for interstate or foreign commerce is dominant. We have observed how specific is this limitation in the provision requiring the issue of warehouse receipts. To repeat, the requirement is that receipts shall be issued "for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States", in a warehouse licensed under the Act. Sec. 259. The amendment of 1931, with respect to conflict with the operation of state laws does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act, and the definition in the original Act of the warehouses which may be licensed and the provision of section 259 as to the products for which warehouse receipts are to be issued, were left unchanged by the amendment.

The penal section under which the indictment is laid defines the offense as not simply the unauthorized removal of agricultural

[4] Act of August 11, 1916, c. 313, Part C, 39 Stat. 486.
[5] Act of February 23, 1923, c. 106, 42 Stat. 1282; "Once Again the United States Warehouse Act", U. S. Department of Agriculture (1925), p. 3.

products from a "licensed warehouse", but the removal of products "for which licensed receipts have been or are to be issued". Sec. 270. We think that the term "licensed receipts" refers to those prescribed by the statute as above stated.

We agree with the Government that the penal section is fully descriptive of the statutory offense and does not require that a charge of violation should contain allegations such as would be appropriate in the case of common law larceny. But the statute does require that in order to make out a violation through the unauthorized removal of agricultural products, it is not enough that the removal should be from a licensed warehouse, or that a receipt has been given by the warehouseman, but the removal must also be of products for which "licensed receipts" have been or are to be issued. That is, it is an essential ingredient of the offense that the products have been stored for interstate or foreign commerce, or in a place subject to the exclusive jurisdiction of the United States, and that warehouse receipts have been or are to be issued for such storage.

3. As we conclude that the Congress has not attempted to punish the removal of products not stored for interstate or foreign commerce (when the place of storage is not within the exclusive jurisdiction of the United States), we need not consider the constitutional objections to such an effort. And as we do not have before us the case of a removal of products stored for interstate or foreign commerce, and for which receipts have been given accordingly, we express no opinion as to the extent of the power of the Congress in that relation.

Because of the absence from the charge of an essential element of the offense as defined in the statute, the District Court did not err in sustaining the demurrer.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.